

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Case No. 08-cv-2425
)	(Consolidated)
RESOURCE TECHNOLOGY CORPORATION,)	Hon. Matthew F. Kennelly
)	
Debtor.)	
)	
)	Appeal from
)	Case No. 99 B 35434
)	
)	Hon. Eugene R. Wedoff

**BRIEF OF APPELLEES ALLIED WASTE INDUSTRIES, INC.,
AMERICAN DISPOSAL SERVICES OF ILLINOIS, INC.,
AND SANGAMON VALLEY LANDFILL, INC.**

Robert S. O'Meara
Adam R. Chiss
Ann E. Pille
Reed Smith LLP
10 South Wacker Drive
Chicago, IL 60606
(312) 207-1000

*Attorneys for Allied Waste Industries, Inc.,
American Disposal Services of Illinois, Inc., and
Sangamon Valley Landfill, Inc.*

TABLE OF CONTENTS

I.	STATEMENT OF APPELLATE JURISDICTION.....	1
II.	ISSUES PRESENTED ON APPEAL.....	1
III.	STANDARD OF REVIEW	2
IV.	FACTS RELEVANT TO THE ISSUES PRESENTED FOR REVIEW	3
A.	The Landfill Agreements.....	3
B.	The Motion To Assume And Assign The Landfill Agreements.....	4
C.	The Bankruptcy Court Denies The Motion To Assume And Assign The Landfill Agreements And The Motion To Consider New Evidence.....	6
V.	LEGAL ARGUMENT.....	8
A.	The Bankruptcy Court Applied The Correct Legal Standard For Determining Adequate Assurance Of Future Performance.	9
1.	The Bankruptcy Court’s Decision That IIT Failed To Provide Adequate Assurance Of Its Financial Ability To Perform Under The Landfill Agreements Was Not Clearly Erroneous.	10
a.	There was no documentary evidence submitted at trial that Scattered or Chiplase could provide the funding needed by IIT.....	11
b.	The testimony of Mr. Jahelka and Mr. Greenblatt was unreliable and uncorroborated.....	13
c.	The requirement of adequate assurance of future performance under Section 365 of the Bankruptcy Code cannot be satisfied without some showing that the proposed assignee can adequately perform in the future.....	18
2.	The Bankruptcy Court Did Not Rule On The Competency Or Qualifications Of IIT’s Personnel.....	20
3.	IIT Attempts To Improperly Shift Its Burden To Allied.....	22
4.	The Bankruptcy Court Did Not Err When It Determined That Inadequate Remedies Existed In The Event Of A Breach By Either The Lenders Or IIT.	23
a.	IIT would not sue the Lenders in the event of a breach.....	23

b.	Because IIT is a common law trust, Allied lacks effective remedies to pursue IIT in the event of a breach under the Landfill Agreements.....	25
B.	The Bankruptcy Court Did Not Err In Denying IIT’s Motion To Allow For The Presentation Of Addition Circumstances.	28
1.	IIT’s Motion To Allow Proposes A Entirely New Transaction Created Post-Trial.	28
2.	The Bankruptcy Court Did Not Abuse Its Discretion When It Denied The Motion to Allow.	29
C.	Allied, Sangamon, And American Disposal Have Standing In This Case.	33
1.	IIT Cannot Properly Raise A Standing Objection.	33
2.	IIT Has Waived Any Objection To Allied’s “Standing.”	35
3.	IIT Has Admitted That Allied Is The Proper Counter-Party To The Landfill Agreements.....	37
VI.	CONCLUSION	39

TABLE OF AUTHORITIES

CASES

<i>Anderson v. Bessemer City</i> , 470 U.S. 564 (1985).....	5
<i>Bucktown Partners v. Johnson</i> , 119 Ill. App. 3d 346 (1st Dist. 1983).....	17
<i>Bucktown Partners v. Johnson</i> , 119 Ill. App. 3d 346, 456 N.E.2d 703 (1st Dist. 1983).....	16
C 20351, 1991 WL 167008 (N.D. Ill. 1991)	1, 2, 5
<i>Duwamish Tribe of Indians v. United States</i> , 79 Ct. Cl. 530, 576 (Ct. Cl. 1934).....	17
<i>Dickerson v. Board of Ed.</i> , 32 F.3d 1114 (7th Cir. 1994)	34
<i>Harrington v. City of Chicago</i> , 433 F.3d 542 (7th Cir. 2006)	32
<i>Hickory Farms, Inc. v. Snackmasters, Inc.</i> , 509 F. Supp. 2d 716 (N.D. Ill. 2007).....	32
<i>IPEC, Inc. v. International Lithograph Corp.</i> , 869 F.2d 1080 (7th Cir. 1989)	5
<i>In re Alipat, Inc.</i> , 36 B.R. 274 (Bankr. E.D. Mo 1984).....	13
<i>In re Aurora Home Servs., Inc.</i> , No. 99 C 7898, 2000 WL 1468314 (N.D. Ill 2000)	38
<i>In re Bon Ton Rest. & Pastry Shop, Inc.</i> , 53 B.R. 789 (Bankr. N.D. Ill 1985)	23
<i>In re Bygaph, Inc.</i> , 56 B.R. 596 (Bankr. S.D. N.Y. 1986).....	21
<i>In re Carter Hawley Hale Stores, No.</i> LA 91-64140, 1991 Bankr. LEXIS 2186 (Bankr. C.D. Cal. July 30, 1991).....	17
<i>In re Edwards, No. 89 C 20351, 1991 WL 167008, *3 (N.D. Ill. 1991).....</i>	5

<i>In re Estate of Assignment for the Benefit of Creditors of Edward Paul May,</i> 2008 Bankr. LEXIS 1525 (Bankr. E.D. Mich. May 27, 2008).....	28
<i>In re General Oil Distribs., Inc.,</i> 18 B.R. 654 (Bankr. E.D. N.Y. 1982)	14
<i>In re Gurney's Inn Corp. Liquidating Trust,</i> 215 B.R. 659 (Bankr. E.D. N.Y. 1997)	30
<i>In Re Natco Industries,</i> 54 B.R. 436 (Bankr. S.D. N.Y. 1985).....	21
<i>In re Prime Motor Inns, Inc.,</i> 166 B.R. 993 (Bankr. S.D. Fla. 1994)	22
<i>In re Prince,</i> 85 F.3d 314 (7th Cir. 1996)	32
<i>In re Rachels Indus., Inc.,</i> 109 B.R. 797 (Bankr. W.D. Tenn 1990).....	13, 21
<i>In re Resource Tech. Corp.,</i> 528 F.3d 467 (7th Cir. 2008)	4
<i>In re Texas Health Enters., Inc.,</i> 246 B.R. 832 (Bankr E.D. Tex. 2000)	13
<i>In re Texas Health Entes., Inc.,</i> 72 Fed. Appx. 122 (5th Cir. 2003).....	13, 16
<i>In re Westview 74th St. Drug Corp.,</i> 59 B.R. 747 (Bankr. S.D.N.Y. 1986).....	13, 21
<i>In re Woodbrook Assocs.,</i> 19 F.3d 312 (7th Cir. 1994)	5
<i>International Travelers Cheque Co. v. BankAmerica Corp.,</i> 660 F.2d 215 (7th Cir. 1981)	39
<i>Lee v. Deloitte & Touche LLP,</i> 428 F. Supp. 2d 825 (N.D. Ill. 2006).....	38
<i>Marshall v. Amalgamated Ins. Agency Servs., Inc.,</i> 523 F. Supp. 231 (N.D. Ill. 1981).....	32

<i>Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.</i> , 866 F.2d 228 (7th Cir. 1988)	5
<i>Passamaquoddy Tribe v. United States</i> , 82 Fed. Cl. 256 (Fed. Cl. 2008)	17
<i>Peacock v. Board of Sch. Comm'rs</i> , 721 F.2d 210 (7th Cir. 1983)	32, 33
<i>Rogers v. Samedan Oil Corp.</i> , 308 F.3d 477 (5th Cir. 2002)	39
<i>Sternberger v. United States</i> , 401 F.2d 1012 (Ct. Cl. 1968)	17
<i>Sweilem v. Illinois Dept. of Revenue</i> , 372 Ill. App. 3d 475, 865 N.E.2d 459 (1st Dist. 2007)	16
<i>Texas Health Enters. v. Lytle Nursing Home Enters., Inc. (In re Tex. Health Enters.)</i> , 72 Fed. Appx. 122, 125 (5th Cir. 2003)	5
<i>United Healthcare Corp. v. American Trade Ins. Co.</i> , 88 F.3d 563 (8th Cir. 1996)	39

STATUTES

11 U.S.C. § 101(41)	28
11 U.S.C. § 101(9)	28
11 U.S.C. § 109	28
28 U.S.C. § 158(a)(1)	4
760 ILCS 5/1	30
Fed. R. Bankr. P. 8010	4
Fed. R. Bankr. P. 8013	passim
Fed. R. Civ. P. 59	10, 31, 32
Fed. R. Evid. 201(b)	37, 40

OTHER AUTHORITY

Report of Commission on Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, 93 Cong., 1st Sess. Pt. II 156-57 (1973).....	13
12 <i>Moore's Federal Practice</i> § 59.13[4] at 59-95	32, 33, 34
Wright, Miller & Kane, <i>Federal Practice and Procedure: Civil</i> 2d § 2808	29

Pursuant to Fed. R. Bankr. P. 8010, Appellees, Allied Waste Industries, Inc., American Disposal Services of Illinois, Inc., and Sangamon Valley Landfill, Inc. (collectively referred to herein as “Allied”), hereby respond to Illinois Investment Trust No. 92-7163’s (“IIT”) Brief in Support of its Appeal. Although the appellants, Jay A. Steinberg, as Chapter 7 Trustee (the “Trustee”) for the estate of Resource Technology Corporation (“RTC”), and IIT filed substantially identical notices of appeal and issues to be presented in this case, only IIT has filed a brief in support of its appeal. Accordingly, Allied’s brief addresses the arguments raised by IIT.

I. STATEMENT OF APPELLATE JURISDICTION

District courts of the United States have jurisdiction to hear appeals from final judgments, orders and decrees entered by bankruptcy courts. 28 U.S.C. § 158(a)(1). Appeals from orders resulting in a denial of a motion to assume and assign executory contracts have been held to be final orders. *See In re Resource Tech. Corp.*, 528 F.3d 467, 474 (7th Cir. 2008). Accordingly, jurisdiction is proper in this Court.

II. ISSUES PRESENTED ON APPEAL

IIT identifies eight (8) issues on appeal. Allied disagrees with IIT’s statement of issues number two and eight. As framed by IIT, issue number two erroneously assumes that the Bankruptcy Court required greater assurance of future performance in the proposed assignment to IIT. It did not. Accordingly, Allied restates issue number two as follows:

2. Did the Bankruptcy Court apply the wrong legal standard for determining whether IIT could provide adequate assurance of future performance under Section 365 of the Bankruptcy Code?

With respect to issue number eight, IIT mischaracterizes its post-trial efforts as the presentation of “additional evidence.” IIT did not attempt to present additional evidence. Instead, after the Bankruptcy Court ruled against it following a two-day trial, IIT attempted to

place an entirely new transaction with a new proposed assignee before the Bankruptcy Court on a post-trial basis. Accordingly, Allied restates issue number eight as follows:

8. Did the Bankruptcy Court err when it denied IIT's post-trial motion to assume and assign the Landfill Agreements to a new assignee in a new transaction after the deadline for assuming and assigning executory contracts had already expired?

III. STANDARD OF REVIEW

The Bankruptcy Court's findings of fact are upheld on appeal unless they are determined to be clearly erroneous, and due regard must be given to the Bankruptcy Court's evaluation of witness credibility. Fed. R. Bankr. P. 8013. Conclusions of law are reviewed *de novo*. *In re Woodbrook Assocs.*, 19 F.3d 312, 316 (7th Cir. 1994). Whether a debtor has provided adequate assurance of future performance is a finding of fact reviewed under the clearly erroneous standard. *Texas Health Enters. v. Lytle Nursing Home Enters., Inc. (In re Tex. Health Enters.)*, 72 Fed. Appx. 122, 125 (5th Cir. 2003). The clearly erroneous standard is "a tough test" and the party seeking to demonstrate a lower court's findings of fact as clear error "has a heavy burden to bear." *In re Woodbrook Assos.*, 19 F.3d at 316; *In re Edwards*, No. 89 C 20351, 1991 WL 167008, *3 (N.D. Ill. 1991), quoting *IPEC, Inc. v. International Lithograph Corp.*, 869 F.2d 1080, 1083 (7th Cir. 1989).

If a lower court's factual findings are plausible when viewing the record as a whole, then the reviewing court may not reverse even if it is convinced that it would have weighed the evidence differently if it had been sitting as the trier of fact. *Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985). As stated another way by the Seventh Circuit, "[t]o be clearly erroneous, a decision must strike us as . . . wrong with the force of a five-week-old, unrefrigerated, dead fish." *Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228, 233 (7th Cir. 1988).

IV. FACTS RELEVANT TO THE ISSUES PRESENTED FOR REVIEW

A. The Landfill Agreements

This appeal involves the denial by the Bankruptcy Court of the Trustee's motion to assume and assign three landfill gas-to-energy contracts relating to Allied and one contract involving the City and County of Peoria.

With respect to Allied, the three landfill agreements at issue are: (i) a Landfill Agreement dated December 29, 1995, originally entered into between RTC and John Sexton Contractors Co., that required RTC to construct and operate a landfill gas-to-energy facility at a landfill in located in Bloomington, Illinois (the "Bloomington Agreement") (AW Ex. 6.)¹; (ii) a Landfill Agreement dated May 26, 1995, originally entered into between RTC and ESG Watts, Inc., that required RTC to construct and operate a landfill gas-to-energy facility at a landfill in Springfield, Illinois (the "Springfield Agreement") (AW Ex. 8); and, (iii) a Landfill Agreement dated December 30, 1996, originally entered into between RTC and Liberty Waste Services of Ohio, that required RTC to construct and operate a landfill gas-to-energy facility at a landfill in Litchfield, Illinois (the "Litchfield Agreement") (AW Ex. 5.)

After RTC entered into contracts with the landfill owner of each site, Allied purchased the Litchfield, Bloomington and Sangamon landfills in separate transactions from ESG Watts, Liberty Waste Services and John Sexton Contractors. As a result of those purchases, Allied

¹ Citations to the record on appeal will be to the Bankruptcy Court docket number of a particular document ("DN ____"); to the transcripts of the February 12-13, 2008 trial, the March 5, 2008 hearing, and the March 11, 2008 hearing ("2/12/08 Tr., p. ____"), and to the trial exhibits contained in Allied's Designation of Additional Items to be Included On Appeal as ("AW Ex. ____"). For the Court's reference, because the four transcripts are heavily cited, Allied is submitting an appendix in conjunction with its response brief that contains a complete copy of all four transcripts. In addition, the appendix includes docket numbers 2840, 2976, 3185, 3807, 3819, which were not included in the record on appeal (see footnotes 7 and 11 and accompanying text.)

acquired the rights to the Litchfield and Bloomington contracts, and the rights to enforce the Sangamon contract. (the Bloomington, Litchfield and Sangamon agreements are collectively referred to hereinafter as the “Landfill Agreements”).

B. The Motion To Assume And Assign The Landfill Agreements

In 1999, certain creditors filed an involuntary petition against RTC for relief under Chapter 7 of the Bankruptcy Code. (DN 1.) Thereafter, RTC converted the case to a Chapter 11 reorganization. RTC operated its bankruptcy estate as a debtor in possession until August 26, 2003, at which time the U.S. Trustee appointed Gregg E. Szilagyi as Chapter 11 Trustee for RTC. (DN 1804.) The Chapter 11 Trustee operated the estate until September 21, 2005, when the case was converted back to a Chapter 7 liquidation and Jay A. Steinberg was appointed as the Chapter 7 Trustee. (the “Trustee”)(DN 2577.)

On February 17, 2006, the Chapter 7 Trustee filed a motion for authority to enter into a settlement agreement (the “Settlement Agreement”) with certain secured creditors including Leon Greenblatt, Banco Panamericano, Chiplase, Inc. and Scattered Corporation. (DN 3091.) Scattered and Chiplase are referred to herein collectively as the “Lenders.” As part of the Settlement Agreement, and over the objection of Allied and other landfill owners, the Lenders acquired the right to designate executory contracts held by the Estate that the Trustee would be required to assume under Section 365 of the Bankruptcy Code and then assign to the Lenders or the Lenders’ designee. If the Trustee refused to seek the Bankruptcy Court’s approval to assume and assign a contract designated by the lenders, then the Lenders had the right to file a motion to compel the Trustee to do so. (DN 3170 at Exhibits A & C.) The Bankruptcy Court approved the Settlement Agreement on March 16, 2006. (DN 3170.)

On April 28, 2006, the Chapter 7 Trustee filed a motion to assume and assign the Landfill Agreements to the Lenders. (DN 3249.) Following Allied’s objection to that motion, the Trustee

refused to assume and assign the Bloomington Agreement absent a motion to compel. Accordingly, on May 26, 2006, the Lenders filed a motion to compel the Chapter 7 Trustee to assume and assign the Bloomington Agreement. (DN 3327.) On June 29, 2006, the Bankruptcy Court granted the motion to compel as to the Bloomington Agreement and ordered the Chapter 7 Trustee to file a motion to assume and assign that agreement and all other remaining contracts by the deadline of July 7, 2006. (DN 3462.) Thereafter, the Court would allow the counter-parties to any designated contract to file an objection, and each proposed assumption and assignment would be scheduled for discovery and a trial to determine whether the Lenders could pay the cure costs and demonstrate adequate assurance of future performance. *Id.*

On July 7, 2006, the Trustee filed his last *Motion of Chapter 7 Trustee Pursuant To This Court's Order Compelling Trustee to Assume and Assign Certain Executory Contracts Subject to Court Approval of (1) Demonstration By The Purchasers Of The Ability To Pay Cure Costs; (2) Demonstration By The Purchasers Of Adequate Assurance of Future Performance; (3) Assumption; And (4) Assignment.* (DN 3478.) The Bloomington Agreement was included in that motion to assign. (*Id.*) Because the Chapter 7 Trustee had not refused to seek the assumption and assignment of the Sangamon and Litchfield Agreements following the filing of his April 28, 2006 motion to assume and assign, those contracts were carried along with the July 7, 2006 motion. For ease of reference, the April 28, 2006 motion seeking to assume and assign Allied's Litchfield and Sangamon Agreements, and the July 7, 2006 motion seeking to assume and assign the Bloomington Agreement shall hereinafter be referred to as the "Motion to Assign."

Following the filing of the Motion to Assign, the Bankruptcy Court set a scheduling order and a trial date on the issue of cure costs relating to the Landfill Agreements. The Bankruptcy

Court's preference was to first hold trials on the issue of cure costs and, assuming the Lenders could satisfy a particular contract's cure amount, then hold a trial on adequate assurance of future performance. On March 13, 2007, prior to the cure cost trial on the Landfill Agreements, Allied and the Lenders' proposed designee, Illinois Investment Trust No. 92-7163, agreed to a Stipulation in Lieu of Trial ("Stipulation"), wherein they stipulated to the amount of cure costs IIT would pay Allied under each Landfill Agreement if and when the Bankruptcy Court granted the Motion to Assign following an adequate assurance trial. (DN 3875.)

The Stipulation provided that if IIT were to be assigned the Landfill Agreements following an adequate assurance trial, it would pay Allied cure costs of \$500,000 relating to the Sangamon Agreement, \$449,000 relating to the Bloomington Agreement, and \$400,000 relating to the Litchfield Agreement. (*Id.*) In addition, the Stipulation required IIT to post a performance bond of \$1.375 million at each of the Sangamon and Litchfield sites, and \$1.75 million at the Bloomington site. (*Id.*) Each of the cure cost payments and performance bonds were a condition precedent to IIT performing any work at the landfill sites under the Landfill Agreements. (*Id.*) IIT entered into a similar stipulation with the City and County of Peoria.

C. The Bankruptcy Court Denies The Motion To Assume And Assign The Landfill Agreements And The Motion To Consider New Evidence

On February 12-13, 2008, the Bankruptcy Court conducted a trial on the Motion to Assign in order to determine whether the Chapter 7 Trustee, and IIT, could demonstrate adequate assurance of future performance relating to the Landfill Agreements (the trial included the City and County of Peoria's landfill agreement). (DN 4097.) IIT presented evidence of its corporate structure, its plans for each landfill site, its operations and staffing and, most importantly, its financial needs and a proposed loan agreement with the Lenders, finalized one week before trial,

whereby Scattered and Chiplease were allegedly going to loan IIT up to \$3 million dollars in order to meeting its financial obligations under the Landfill Agreements. (2/12/08 – 2/13/08 Tr.)

At the conclusion of the two-day trial, the Bankruptcy Court issued its ruling from the bench denying the Motion to Assign. (2/13/08 Tr. pp. 252-261.) On February 14, 2008, an order was issued denying the Motion to Assign for the reasons stated on the record at trial. (DN 4176.) The principal but not only basis on which the Bankruptcy Court ruled was the lack of assurance that funds necessary to honor IIT's obligations under the Landfill Agreements would actually be available:

The principle and the basis on which I am rendering my decision today is that the counter-parties to this contract, these contracts, have no ability to assure that the funds necessary for performance by the proposed assignee will actually be made available.

(2/13/08 Tr. p. 261:2-7.)

After the trial, on February 29, 2008, the Trustee and IIT filed a *Motion to Allow for the Presentation Of Additional Circumstances For The Stay of Enforcement Of The Court's Order And To Allow For The Assumption And Assignment Of Contracts* (the "Motion to Allow"). (DN 4182.) IIT's Motion to Allow sought to reopen the proofs in the case or, alternatively, for a new trial, in order to present an entirely new transaction with a new assignee and new loan documents pursuant to Fed. R. Civ. P. 59. It was IIT's intent that this new proposal would satisfy the requirements of adequate assurance where its previous proposal had failed. (*Id.*)

At the initial presentment of the Motion to Allow on March 5, 2008, the Bankruptcy Court again read into the record the detailed reasons why he held at trial that the Trustee and IIT failed to meet their burden in establishing adequate assurance future performance. (3/5/08 Tr. pp. 3-6.) The Bankruptcy Court also explained he was prepared to rule against IIT's Motion to Allow as both untimely and improper under Fed. R. Civ. P. 59 and 60. (3/5/08 Tr. pp. 6-17.)

The Bankruptcy Court briefly continued the Motion to Allow to await the issuance of the trial transcript, and ultimately denied the motion on March 11, 2008. (3/11/08 Tr. p.8.) At that hearing, the Bankruptcy Court also dispensed with IIT's argument that the Court had invited IIT to file a new proposal in order to establish adequate assurance after its first attempt was denied at trial. (3/11/08 Tr. pp.2-8; DN 4188.) This appeal followed.

V. LEGAL ARGUMENT

At trial, IIT's adequate assurance showing consisted of a plan to construct and/or operate landfill gas-to-energy conversion systems at each of the landfills pursuant to the terms of the Landfill Agreements. By IIT's own estimates, it needed access to approximately \$3 million to comply with its cure cost obligations and its obligations under the Landfill Agreements. As IIT had only \$1,000 of recently deposited funds in its bank account, and no real operating history since it was created in 1992, it needed a source of capital to fund its proposed operations. Thus, while IIT proposed to provide the staffing and operational experience to operate under the Landfill Agreements, Scattered and Chiplease were to provide IIT with the necessary funding via a loan agreement and promissory note to IIT. As a result of this proposed structure, the question of whether IIT would likely receive the funds from the Lenders was a critical component of demonstrating adequate assurance.

The Bankruptcy Court identified three issues that the Trustee and IIT had the burden of proving by a preponderance of the evidence at trial in order to satisfy the adequate assurance standard. Those three points were: (1) whether the \$3,000,0000 promised by the Lenders in the loan agreement and promissory note would actually be received by IIT; (2) whether that money, if it was received, would be sufficient to operate under the Landfill Agreements, and (3) whether the individuals operating IIT would be able to comply with the obligations imposed by the Landfill Agreements. (2/13/08 Tr. p. 179:9-19.; 3/5/08 Tr. p. 4:5-13.)

At the close of trial, the Bankruptcy Court concluded that the Trustee and IIT failed in their burden with respect to the first issue, and it was unnecessary to reach a decision on the remaining two issues. (3/5/08 Tr. p. 4:14-18.) In Judge Wedoff's words, the "basis for that determination, that the funding had not been shown to be sufficiently available, was multitudinous." (3/5/08 Tr. p. 4:19-21.)

IIT now challenges the Bankruptcy Court's findings on the basis that the Court misapplied the standard of what was required to show adequate assurance of future performance. IIT also claims that the Bankruptcy Court failed to accept the unchallenged testimony of its witnesses and failed to consider additional evidence of an alternative proposal following its loss at trial. It is IIT that misapplies the legal standard of what constitutes adequate assurance here on appeal and, moreover, ignores the overwhelming evidence that demonstrated that the funds promised to IIT, which IIT needed in order to comply with its obligations under the Landfill Agreements, were not sufficiently available. Accordingly, Judge Wedoff's decision was not clearly erroneous and should be affirmed.

A. The Bankruptcy Court Applied The Correct Legal Standard For Determining Adequate Assurance Of Future Performance.

IIT contends that the Bankruptcy Court applied the wrong legal standard in determining whether IIT had set forth adequate assurance of future performance. According to IIT, the Bankruptcy Court erred by (1) requiring an absolute guaranty of performance; (2) disregarding the experience and competence of IIT's personnel; (3) overlooking the fact there was no evidence that Scattered or Chiplease would breach their agreement to loan the funds to IIT, and (4) determining that IIT was a non-business trust that was not eligible for involuntary bankruptcy and could not be sued in its own name. As the evidence offered at trial demonstrates, IIT is wrong on each count. Judge Wedoff applied the correct legal standard, but IIT utterly failed to

meet its burden of proving adequate assurance of future performance by a preponderance of the evidence.

The burden at trial was on the Trustee, and IIT, as the moving party to show that IIT could provide adequate assurance of future performance. This standard requires IIT to have the financial and operational capacity, competence, and willingness to perform under the Landfill Agreements. *See In re Texas Health Enters., Inc.*, 72 Fed. Appx. 122, 126 (5th Cir. 2003). “‘The terms adequate assurance of future performance’ are not words of art; the legislative history of the [Bankruptcy] Code shows that they were intended to be given a practical, pragmatic construction.” *In re Texas Health Enters.*, 72 Fed. Appx. at 126; *see also In re Westview 74th St. Drug Corp.*, 59 B.R. 747, 754 (Bankr. S.D.N.Y. 1986); *In re Rachels Indus., Inc.*, 109 B.R. 797, 803 (Bankr. W.D. Tenn 1990). According to the legislative history, “the phrase adequate assurance as used in section 365 is traced to the phrase ‘adequate assurance’ defined in § 2-609 of the Uniform Commercial Code.” *In re Texas Health Enters., Inc.*, 246 B.R. 832, 834 (Bankr. E.D. Tex. 2000); *see also In re Alipat, Inc.*, 36 B.R. 274 (Bankr. E.D. Mo 1984). “What constitutes adequate assurance is to be determined by factual conditions; the [party] must exercise good faith and observe commercial standards; his satisfaction must be based upon reason and must not be arbitrary or capricious.” *In re Texas Health Enters.*, 246 B.R. at 835 (citing Report of Commission on Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, 93 Cong., 1st Sess. Pt. II 156-57 (1973)).

1. The Bankruptcy Court’s Decision That IIT Failed To Provide Adequate Assurance Of Its Financial Ability To Perform Under The Landfill Agreements Was Not Clearly Erroneous.

Although adequate assurance does not mean absolute insurance that the contract will be performed, the intention is to afford the non-debtor parties “with a measure of protection from having to be saddled with a [party] that may continue to default and return to bankruptcy.” *In re*

Rachels Indus., Inc. 109 B.R. at 803. Further, where considerations of public health, safety, and welfare are implicated – such as here, where IIT would be tasked with safely installing and operating gas collection and conversion systems to control methane gas in compliance with all applicable environmental regulations -- the public interest demands a higher standard of assurance of future performance. *In re General Oil Distribs., Inc.*, 18 B.R. 654, 658 (Bankr. E.D. N.Y. 1982).

a. **There was no documentary evidence submitted at trial that Scattered or Chiplease could provide the funding needed by IIT.**

IIT claims that because the original Landfill Agreements did not contain guarantees, security deposits, and letters of credit, the Bankruptcy Court erred at trial when it required IIT to satisfy “an impossible standard of absolute performance.” (Appellant’s Brief, p. 14.) Yet the Bankruptcy Court required no such thing from IIT, and IIT can provide no cite to the record where Judge Wedoff applied such a standard. Instead, as the Bankruptcy Court made abundantly clear, it focused on the evidence of IIT’s financial ability to perform the Landfill Agreements and simply found it woefully lacking.

In order to meet its cure cost obligations and operate the Landfill Agreements, IIT needed significant outside funding. (Appellant’s Brief, p. 7, 12.) Rather than seek that funding from a recognized financial institution with millions of dollars in assets, IIT instead sought financing from Scattered and Chiplease, both of which were beneficiaries of IIT.² The testimony of Scattered’s and Chiplease’s principals, even if it taken at face value, disclosed a distinct lack of

² Mr. Connolly, IIT’s trustee, testified that he did not seek out any other avenues of financing, and the sum total of his investigation into whether the Lenders had the financial ability to loan the necessary funds to IIT was that he asked them if they could do it and they said yes. (2/12/08 Tr. p. 206-208.)

liquid assets sufficient to provide the funding required by IIT, and absolutely no corroboration that either entity possessed the assets each claimed it did.

On direct examination, the president of Scattered, Andrew Jahelka, admitted that Scattered had not provided any funding to IIT, and did not have the present ability to do so, but he suspected that it might be able to do so “shortly.” (2/12/08 Tr. pp. 37-38.) Mr. Jahelka claimed that Scattered held various assets including an indirect interest in an oil and gas partnership that could provide Scattered with approximately \$700,000 a month in free cash flow, as well as an interest in a commercial building that was for sale (and tied up in litigation), and another commercial building allegedly worth millions. Yet, there was not a single iota of documentary evidence introduced at trial -- not a bank statement, a tax return, a financial statement, an appraisal or contract of any kind -- that established that Scattered actually had such assets or that they were worth what Mr. Jahelka claimed they were.

Similarly, Mr. Greenblatt, testified on behalf of Chiplase that it too had millions of dollars in assets and a free monthly cash flow of approximately \$150,000 month that it could use to fund IIT. (12/13/08 Tr. p. 12, 14.) But, just like with Mr. Jahelka’s testimony, neither Chiplase nor IIT introduced a scrap of documentary evidence that would establish Chiplase’s assets, liabilities, cash flows or ability to fund the loan. Although Mr. Jahelka testified that Scattered did not prepare or maintain regular financial statement, income statements, balance sheets or a statement of the sources and uses of cash, Mr. Greenblatt testified that Chiplase did prepare and maintain such financial documents reasonably current. (2/12/08 Tr. pp. 42-43; 2/13/08 Tr. pp. 26:18-27:8.) Yet when asked how Chiplase would fund its obligations to IIT, the sum total of Mr. Greenblatt’s explanation was “we would just pay.” (2/13/08 Tr. p 15.)

As the Bankruptcy Court correctly summarized during closing arguments, the testimony of Mr. Greenblatt and Mr. Jahelka consisted of nothing more than empty promises:

Okay. Let me just point out that the best security you're offering to the counter-parties [i.e. the landfill owners] to these agreements that IIT will have the money that is needed to comply with IIT's obligations is the unsecured promise of Chiplase and Scattered Corporation to honor a loan commitment. That's the security.

* * *

But beyond that, it is completely unsecured. They . . . [have to rely] on an unsecured promise by two corporations that are not publicly held, have no documentation that's been produced here as to what their financial circumstances are. We have only the testimony of two individuals as to what their net worth and ability to make payments are.

(2/13/08 Trial Tr. pp. 189:11-190:14.)

Accordingly, it is was not clearly erroneous for the Bankruptcy Court find that a proposed assignee that fails to set forth any reliable evidence of its ability to satisfy the financial obligations under the contract it seeks to assignee has failed to establish adequate assurance of future performance. *See e.g. In re Texas Health Entes., Inc.*, 72 Fed. Appx. 122, 126 (5th Cir. 2003)(one factor is whether a debtor's financial data indicate an ability to generate income sufficient to meet its obligations.)

b. The testimony of Mr. Jahelka and Mr. Greenblatt was unreliable and uncorroborated.

In its opening brief, IIT lists what it purports to be evidence of the Lenders' ability to provide the funds IIT needs to operate under the Landfill Agreements. IIT argues that this "evidence" is unrebutted and faults the Bankruptcy Court for allegedly disregarding it. (Appellant's Brief, pp. 17-19). IIT cites *Bucktown Partners v. Johnson*, 119 Ill. App. 3d. 346, 353-55, 456 N.E.2d 703 (1st Dist. 1983) and *Sweilem v. Illinois Dept. of Revenue*, 372 Ill. App. 3d 475, 485, 865 N.E.2d 459, 468 (1st Dist. 2007), for the proposition that unrebutted testimony

cannot be disregarded unless it is impeached, contradicted by positive testimony or circumstances, or found to be inherently improbable.

The cases cited by IIT, however, deal with state law claims and apply state rules of evidence, not the federal rules of evidence. In cases involving bankruptcy law and, specifically, assignments under Section 365, courts will examine documentation of a proposed assignee's financial wherewithal to perform. *See e.g. In re Carter Hawley Hale Stores*, No. LA 91-64140, 1991 Bankr. LEXIS 2186, *11-13 (Bankr. C.D. Cal. July 30, 1991) (holding that assignee provided adequate assurance of future performance by presenting testimony and documentary evidence involving audited financial statements to demonstrate the equity and cash flow sufficient to meet monetary obligations of lease.)

Moreover, "[e]xaggeration, inherent improbability, self-contradiction, omissions in a purportedly complete account, imprecision and errors may all breed disbelief and therefore the disregard of even uncontradicted nonopinion testimony." *Passamaquoddy Tribe v. United States*, 82 Fed. Cl. 256, 273 (Fed. Cl. 2008) (quoting *Sternberger v. United States*, 401 F.2d 1012, 1016-17 (Ct. Cl. 1968)); *Duwamish Tribe of Indians v. United States*, 79 Ct. Cl. 530, 576 (Ct. Cl. 1934) (emphasis added). Even the *Bucktown Partners* case relied upon by IIT holds that testimony may be disregarded if it lacks credence or is unworthy of belief, if it is surrounded by suspicious circumstances, if it is evasive, impossible and equivocal, or if legitimate inferences cause a reasonable doubt upon the truth or accuracy of the testimony. *Bucktown Partners v. Johnson*, 119 Ill. App. 3d. 346, 353-55 (1st Dist. 1983).

Here, the testimony offered by Messrs. Jahelka and Greenblatt was anything but unchallenged. Furthermore, it was unreliable, evasive and uncorroborated by any contemporaneous evidence. For example, Mr. Jahelka's testimony that Scattered, a company

with allegedly millions of dollars in assets, did not keep or maintain any statements reflecting its financial condition or affairs was certainly suspicious under the circumstances. (2/12/08 Tr. pp. 42-43.) Even if true, it does not explain why Scattered did not prepare such items in advance of trial when one of the threshold issues involved Scattered's ability to fund IIT.

In addition to being wholly uncorroborated, the testimony of Mr. Jahelka and Mr. Greenblatt was unreliable and evasive. They simply couldn't get their stories straight. For example, Mr. Jahelka testified that there was no agreement between Scattered and Chiplease regarding which entity would fund what portion of IIT's needs. (2/12/08 Tr. p. 40.) Mr. Greenblatt testified, however, that there was a written agreement that mandated Scattered provide IIT with 75% of the funding and Chiplease the remaining 25% (2/13/08 Tr. p. 24.) Mr. Jahelka testified that there was no relationship between Scattered and Chiplease other than the loan to IIT. (2/12/08 Tr. p. 38.) Yet, on cross-examination, he admitted that Scattered and Chiplease were co-beneficiaries of IIT and that Scattered and Chiplease had common ownership, officers and directors. (2/12/08 Tr. pp. 50-54.) Moreover, Chiplease and Scattered owned the debtor, RTC, together through another entity Rumpelstiltskin, and had other related business dealings. (*Id.*)

Mr. Greenblatt was similarly less than forthcoming when he testified at trial and was impeached with his deposition answers on the relatively innocuous issue of where Chiplease maintained its offices and whether it pays rent. (2/13/08 Tr. pp. 30-33.) In addition, Mr. Greenblatt testified at his deposition two weeks before trial that Chiplease had approximately \$100,000 in cash on hand. (2/13/08 Tr. p. 35.) But two weeks later at trial, Mr. Greenblatt claimed Chiplease had \$1.2 million in its bank account. (2/13/08 Tr. p. 35-36.) Notwithstanding Mr. Greenblatt's testimony that Chiplease prepares "reasonable current" financial statements,

balance sheets and income statements, none were used in trial, none were admitted as exhibits, and none were produced to Allied to reconcile the inconsistency or otherwise support Mr. Greenblatt's testimony. (*See* 2/13/08 Tr. pp. 232:6-235:20.)

In light of the complete absence of documentary support, and the evasive, unreliable and impeached testimony of Mr. Jahelka and Mr. Greenblatt, the Bankruptcy Court could have reasonably surmised that they were being less than credible in detailing their assets, liabilities, financial condition and intentions. Fed. R. Bankr. P. 8013. It is certainly not clearly erroneous to discount the oral testimony of such witnesses when it is unsupported by contemporaneous documentary evidence of the nature and type that one would expect a business entity to prepare and maintain in the normal course of its business.

As is clear from the Bankruptcy Court's findings, and contrary to IIT's assertions here, the Court was not looking for IIT to provide a guarantee of "absolute performance" in order to satisfy the adequate assurance standard. Instead, the Bankruptcy Court was looking for any evidence that IIT would actually receive the funds it needed in order to meet its obligations under the Landfill Agreements:

[L]et's just come to this point, because I don't think this matter needs to go any further. Any time there is a need to provide adequate assurance of future performance, the first thing that's done is to show the financial ability of the proposed counter-party to provide the services that are necessary and to provide the assurance that that financial ability will continue into the future.

So what does one typically do? One looks at the operating history of the entity, one looks at its balance sheet, one looks for any guarantee of performance that can be offered, and those things provide some kind of adequate assurance that performance is going to be able to be provided.

What do we have here? We have an entity that's never done business before, that has provided no balance sheet, no

income statement, that acknowledges a need to have substantial funds available in the near future.

And the only evidence that is has that those funds will be available is a contract negotiated with the same people on both sides of the contract, and with, as I've just outlined, no ability of the entity who is going to be providing the services to sue for completion of the agreement that's going to provide the financing. The only assurance that we have that this will be done is the statement by Messrs. Jahelka and Greenblatt that they intend to do it. There is nothing legally enforceable that would required that to be done.

* * *

The \$3 million loan is absolutely essential, based on all of the testimony I have heard, for the performance of these contracts, but there is no effective legal enforcement that the trust would have to obtain payment of that – of those loan proceeds. I will also add that I don't believe there is sufficient evidence to show the ability of the proposed lenders to make those loan payments.

I would have expected in order to be persuaded of that to see balance sheets, incomes statements and other evidence beyond the oral testimony of the principals of those entities. . . .

(2/13/08 Tr. pp. 253-54; 257; see also Tr. 3/5/08 p. 7.)

Ensuring the availability of funds that a proposed assignee admits it needs in order to perform under the relevant agreements is not an impossibly high hurdle in the context of an adequate assurance determination. Nor is it tantamount to an absolute guarantee that the contract will be competently performed such that it gives rise to a misapplication of the adequate assurance standard. Under these circumstances, the Bankruptcy Court did not err in finding that IIT failed to meet the adequate assurance standard when there was no reliable evidence presented that IIT would actually receive the funds it needed to operate from the Lenders.

- c. **The requirement of adequate assurance of future performance under Section 365 of the Bankruptcy Code cannot be satisfied without some showing that the proposed assignee can adequately perform in the future.**

IIT implies that adequate assurance equals the identical assurance offered by RTC when it originally entered into the Landfill Agreements. Therefore, its argument goes, since RTC did not have to show any ability to finance its operations when the Landfill Agreements were originally executed, Allied would be in no worse of a position without such assurance now. Yet this misses the point of section 365, which is specifically designed to provide a non-party debtor “with a measure of protection from having to be saddled with a [party] that may continue to default and return to bankruptcy.” *In re Rachels Indu.*, 109 B.R. at 803. Moreover, IIT’s interpretation of adequate assurance would render the requirements of section 365 meaningless.

IIT’s legal authorities do not support its interpretation of Section 365. IIT cites *In Re Natco Industries*, 54 B.R. 436, 440 (Bankr. S.D. N.Y. 1985), *In re Westview 74th Street Drug Corp.*, 59 B.R. 747, 754-55 (Bankr. S.D. N.Y. 1986), and *In re Sapolin Paints, Inc.*, 5 B.R. 412 (Bankr. E.D. N.Y. 1980) for the general proposition that adequate assurance of future performance does not entitle a counter party to an improved position. These cases, however, all involve unexpired leases where the non-debtor landlord attempted to re-let the premises at higher, market-prevailing prices than what was agreed to in the lease. None of these cases deal with a situation like the one presented here, where the proposed assignee cannot present any evidence that it will receive the funds it needs in order to comply with the contracts.

In fact, IIT contradicts itself when it cites to *In re Bygaph, Inc.*, 56 B.R. 596 (Bankr. S.D. N.Y. 1986), for the proposition that all it has to show under Section 365(f) is “access to money with which to pay its obligations under the Landfill Agreements.” (Appellant Brief pp. 16-17). Even under this simple standard, IIT has failed to carry its burden. All IIT had to show was

access to funding; money or assets on hand or, alternatively, some reliable evidence that its proposed lenders actually had the assets and cash flow to provide the funds. That is not a difficult standard, and it is certainly not akin to requiring an absolute guaranty of performance. Yet, IIT failed to provide evidence of either. If IIT truly wished to receive the assignment of Landfill Agreements, and it had access to legitimate financing, one would have expected it to compile and offer some evidence to support that fact in the year and a half between the time the Trustee filed the Motion to Assign and the trial. The implication of the omission, of course, is that it did not have legitimate financing lined up.

IIT's reliance on *In re Prime Motor Inns, Inc.*, 166 B.R. 993 (Bankr. S.D. Fla. 1994), is also misplaced as it is inapposite to the facts of this case. In that case, the debtor-tenant invested \$1.5 million in improvements to the landlord's property and had otherwise substantially complied with its obligations under the lease. The court held that to allow the landlord to terminate the lease and receive the value of those improvements would "materially improve its position" to the significant prejudice of the debtor. *Id.* at 997. In the situation here, neither the estate of RTC nor IIT made any improvements to the landfill sites that are the subject of the Landfill Agreements. Quite simply, the denial of the Motion to Assign does not result in a forfeiture by IIT nor does it unjustly enrich Allied.

On the contrary, if the Motion to Assign were granted without some showing of adequate assurance by IIT, Allied would be placed in a worse position than when it (or its predecessors) originally contracted with RTC. IIT is essentially controlled and operated by the same individuals that owned, operated and bankrupted RTC. (2/12/08 Tr. p. 181:19-22 (Connolly Cross).) At the time the original Landfill Agreements were executed, RTC was a new company with a fresh slate, and neither RTC nor the individuals who ran it had the extensive track record

of environmental non-compliance and contract breaches that they now possess. Today, IIT is operated by individuals with a long history of defaults, contract breaches and environmental non-compliance claims under contracts similar to the ones at issue here. Without a showing of adequate assurance, Allied would be in a worse position than when it started with the unknown RTC. A result that section 365 is designed to help avoid. *See In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 793 (Bankr. N.D. Ill 1985).

2. The Bankruptcy Court Did Not Rule On The Competency Or Qualifications Of IIT's Personnel.

IIT also claims that the Bankruptcy Court misapplied the adequate assurance standard because it did not properly credit IIT's "qualified, experienced personnel." (Appellant's Brief, p. 10.) According to IIT, its experienced personnel "provide adequate assurance of future performance" and, therefore, the Bankruptcy Court erred when it did not grant the Motion to Assign on that basis. (*Id.* at pp. 10, 12.) In addition to being entirely conclusory, IIT's argument is the equivalent of tilting at windmills. The Bankruptcy Court never considered the issue of whether IIT's personnel were qualified or had the operational competency and willingness to perform under the Landfill Agreements, and it certainly did not rule against IIT on that basis. Although, had it done so, there was more than enough evidence introduced at trial that demonstrated the lack of competence possessed by IIT's staff. Nevertheless, the Bankruptcy Court explicitly limited its ruling on adequate assurance to the issue of IIT's inability to secure the necessary funding and the lack of effective enforcement options in the event of a breach:

At the trial then there were three issues to be determined: One, whether the \$3 million was available to IIT and would actually be received by IIT; two, whether \$3 million would be sufficient and what contingencies were in place for securing additional funding; and, three, whether IIT's personnel would be able to obtain the necessary permits and otherwise operate the site in compliance with all applicable regulations.

Because the court found that the first issue had to be determined against the trustee's motion, the court found that there was no reason to find the other issues, determine the other issues.

(3/5/08 Tr. p. 4(emphasis added).)

Accordingly, the Bankruptcy Court's non-existent ruling on the qualifications or competence of IIT's personnel is not capable of being clearly erroneous, and IIT's argument on this issue is irrelevant. However, had the Bankruptcy Court considered such evidence, it would not have been clearly erroneous for it to conclude that IIT personnel lacked the operational competence to comply with the Landfill Agreements.

IIT has no operating history itself, but all of its managers, engineers and employees were previously employed by RTC. (2/12/08 Tr. pp. 77-80, 181.) During their tenure at the debtor, these individuals guided RTC as it accumulated an impressive record of contract breaches and environmental non-compliance claims while operating similar agreements, not to mention landing RTC in bankruptcy court for nine years. These individuals were responsible for operating the debtor when it received numerous violation notices from the Illinois EPA for alleged environmental compliance in operating landfill gas to energy systems. (*See* AW exhibits 23-60; 2/12/08 Tr. pp. 221-254.) The Illinois EPA repeatedly referred RTC to the Illinois Attorney General's office for legal action due to its failure to remedy the environmental violations. (*Id.*)

In addition to RTC's history of environmental problems, the Bankruptcy Court had previously found RTC to have seriously breached its obligations under three different landfill gas contracts similar to those at issue here. (2/12/08 Tr. pp. 254:19-257:16; *see also* 2/13/08 Tr. pp. 248:22-249:15; AW Ex. 49 and 50.) Perhaps most telling of all is that at the time of trial, John Connolly, the former president of the debtor, and the trustee and manager of the proposed

assignee, IIT, had been sued in his individual capacity by the Illinois Attorney General for environmental violations relating to his faulty oversight and management of a RTC gas collection and control system at the McCook landfill. Mr. Connolly estimated his potential personal liability on that claim at approximately \$4 million. (2/12/08 Tr. pp. 259:9-260:7-22; AW Ex. 53.)

As is clear from these brief examples, RTC had a long history of environmental non-compliance and contract breaches while being managed and operated by the same slate of employees that made up the staff of IIT. Accordingly, if this history of defaults and breaches had been considered by the Bankruptcy Court, it would not have clearly erroneous for it to conclude that IIT's personnel lacked the operational competence to perform under the Landfill Agreement and, hence, that IIT failed to establish adequate assurance of future performance.

3. IIT Attempts To Improperly Shift Its Burden To Allied.

IIT claims that since there was no evidence that Scattered or Chiplease "would be likely to breach their obligations under the loan documents", the Bankruptcy Court should have found the unsecured promises that they would loan the money to IIT sufficient evidence of adequate assurance. (Appellant's Brief, p. 12.) IIT's argument here hinges on a the assertion that there was no evidence introduced at trial that Chiplease ever breached a loan it allegedly made to RTC back in 1999, and that Mr. Jahelka's testimony that Scattered could loan the funds to IIT was unimpeachable. Once again, IIT missed the point. It was not Allied's burden to establish that Scattered or Chiplease would breach their obligations to IIT. Rather, it was the Trustee's and IIT's burden to establish by a preponderance of the evidence that IIT had access to funds it needed to operate the Landfill Agreements. As discussed at length above, IIT failed miserably in that regard. An alleged loan made by Chiplease to RTC circa 1999 has no bearing on whether IIT had sufficient access to the funds it needed for the Landfill Agreements in 2008 and beyond.

Similarly, the testimony of both Mr. Jahelka and Mr. Greenblatt was far from unimpeached and un rebutted.

4. The Bankruptcy Court Did Not Err When It Determined That Inadequate Remedies Existed In The Event Of A Breach By Either The Lenders Or IIT.

In addition to the lack of evidence regarding IIT's ability secure funding to operate, the Bankruptcy Court was also concerned with what it deemed structural impediments that interfered with IIT's ability to enforce breaches by the proposed Lenders and, additionally, Allied's ability to enforce any breaches of the Landfill Agreements by IIT.

a. IIT would not sue the Lenders in the event of a breach.

Under the structure proposed by the Trustee and IIT, if the Landfill Agreements were assumed and assigned they would be held by IIT as trust property. John Connolly was the trustee of IIT, having recently replaced Leon Greenblatt as trustee. (2/12/08 Tr. pp. 56, 182; AW Ex. 2.) Scattered and Chiplease were the beneficiaries of IIT's res, which was originally created by Scattered. (2/12/08 Tr. p. 183; AW Ex. 1.) Mr. Connolly had a long association with the principals of Chiplease and Scattered, as those individuals -- Mr. Jahelka and Mr. Greenblatt -- owned RTC and employed Mr. Connolly as its president for many years. (2/12/08 Tr. pp. 52, 61, 77, 207.) And all of the employee of IIT were former long-term employees at RTC. (2/12/08 Tr. pp. 80, 181.)

As trustee of IIT, Mr. Connolly was obligated to act in the best interest of the trust's beneficiaries, Scattered and Chiplease, which were also the proposed lenders. (AW Ex. 1.) Scattered and Chiplease had the power to remove Mr. Connolly as trustee at will and, furthermore, could simply reacquire trust property by substituting property of what it deemed to be equivalent value. (AW Ex. 1, §§ 7.3, 1.2.) Similarly, Mr. Connolly as the trustee could

simply terminate the trust at any time and distribute the property of the trust to the beneficiaries.
(AW Ex. 1, § 5.4.)

In light of these interlocking relationships between Mr. Connolly, Mr. Greenblatt, Mr. Jahelka, IIT, Scattered and Chiplease, the Bankruptcy Court was concerned that IIT would not pursue the Lenders if they failed to fund the loan agreement following an assumption and assignment of the Landfill Agreements:

[L]et me tell you what the problem is. Whatever Mr. Connolly's situation is, he can be removed [as trustee of IIT]. And his payment, his current employment is entirely in the hands of the very people who would be funding the loans that he needs to operate this business.

If Mr. Greenblatt says to Mr. Connolly, I have decided I am not going to fund this \$3 million loan, Mr. Greenblatt is not going to be sued by Mr. Connolly. If Mr. Connolly were to institute a lawsuit against Mr. Greenblatt, Mr. Greenblatt could remove Mr. Connolly from his position as trustee. It's that simple. There is no availability of any effective remedy.

(2/13/08 Tr. pp. 252:23-253:11.)

Mr. Connolly verified that the Court's concerns were well-founded when he admitted on cross-examination that if the Lenders refused to fund IIT pursuant to the loan agreement he would not sue them. (2/12/08 Tr. p.208:12-15.) And nothing in the loan agreement introduced in evidence imposed a requirement on Scattered or Chiplease to make the loan, it only imposed an obligation on IIT to repay the loans that it received. (3/5/08 Tr. p. 5.) As Allied was neither a party to the loan agreements or an explicit third party beneficiary, it would have no ability to force the Lenders to loan the money to IIT.³ Based on that evidence, the nature of the

³ Much of IIT's brief concerns itself with the Lenders' assets and Allied's remedies against the Lenders. The Bankruptcy Court, however, focused more on IIT's inability to enforce the Lenders' obligations and Allied's lack of remedies against IIT if IIT subsequently breached the Landfill Agreements. (2/13/08 Tr. p. 253-258; 3/5/08 Tr. pp. 5-6)

relationship and entities at issue, and the structure of IIT and its trust provisions, the Bankruptcy Court did not err when it concluded that adequate assurance was also lacking because IIT, acting through Mr. Connolly as its trustee, would have no effective means of enforcing the loan obligations. (2/13/08 Tr. pp. 256-258; 3/5/08 Tr. p. 5-6.)

b. Because IIT is a common law trust, Allied lacks effective remedies to pursue IIT in the event of a breach under the Landfill Agreements.

Just as IIT lacked an effective means of enforcing the loan obligations against the Lenders, the Bankruptcy Court was similarly concerned about Allied's ability to pursue IIT if it breached its obligations under the Landfill Agreements. Nothing in the loan agreements obligated IIT to use any funds it received from the Lenders for the Landfill Agreement. (3/5/08 Tr., p. 6.) Thus, IIT could simply use the money supplied by the Lenders on something other the Landfill Agreements and refuse to meet its post-assignment obligations to Allied.

Because common law trusts cannot sue or be sued in their own names, in order for Allied to have an effective remedy against IIT in the event of a breach, IIT had to be a business trust. Only business trusts are amenable to lawsuits and, thus, capable of being subject to an involuntary bankruptcy proceeding. (3/5/08 Tr. p. 6:13-15); see also 11 U.S.C. § 109.⁴

Federal law governs whether a trust is a business trust for purposes of eligibility for a bankruptcy proceeding. *See In re Estate of Assignment for the Benefit of Creditors of Edward Paul May*, 2008 Bankr. LEXIS 1525, *21 (Bankr. E.D. Mich. May 27, 2008). Under federal

⁴ Section 109(a) of the Bankruptcy Code provides that “[n]otwithstanding any other provision of this section, only a **person** that resides or has a domicile, place of business, or property in the United States ... may be a debtor under this title.” (emphasis added). A “person” is defined to include a “corporation.” *See* 11 U.S.C. § 101(41). A “corporation” is defined to include, among other things, a “business trust.” *See* 11 U.S.C. § 101(9)(A)(v). No other provisions of the Bankruptcy Code applies to permit any other type of trust to be a debtor in a bankruptcy proceeding.

law, business trusts are created for the purpose of carrying on some kind of business or commercial activity for profit. (2/13/08 Tr. p. 182:4-16.) A business trust is “a voluntary pooling of capital by a number of people who are holders of freely transferable certificates evidencing beneficial interest in the trust estate.” (2/13/08 Tr. pp. 197:23-198:1 (citing *AmJr Bankr.*, § 481).)

To determine whether a trust is a business trust, courts examine the trust agreement to determine whether the trust sells securities, carries on a business in a distinct name, has trade creditors, a board of trustees, or a trustee with management power that is not subject to beneficiaries’ consent. (*See* 2/13/08 Tr. pp. 182:18-183:1 (citing *In re Old Second National Bank of Aurora*, 7 B.R. 37 (Bankr. N.D. Ill 1980).)

Here, the trust agreement that established IIT does not provide for the sale of securities or other beneficial interests in IIT, IIT has no trade creditors, no board of trustees, and while the trustee has the power to manage the trust res without the beneficiaries’ consent, the trustee does not have the power to do business in the name of the trust. (*See* AW Ex. 1, § 6.1.) When Judge Wedoff examined the trust agreement, he correctly held that it shared more characteristics with an ordinary trust than a business trust. (2/13/08 Tr. p. 184:14-24.)

IIT argues that it is a business trust because its assets are freely transferable and assignable and that it already does business with third parties. (2/13/08 Tr. p. 183:6-25; *see also* IIT Brief p. 15.) As Judge Wedoff determined when he examined IIT’s alleged “contracts”, they are illusory. (2/12/08 Tr. pp. 262-263.)⁵

⁵ THE COURT: Well, let me short circuit this. I took a look at those exhibits as Mr. Jordan was talking to you about them, Mr. Connolly, and they all seem to me to be agreements by the counterparty to the contract to provide services to IIT at its usual costs and charges.

THE WITNESS: That’s correct, Your Honor.

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IIT cites *In re Gurney's Inn Corp. Liquidating Trust*, 215 B.R. 659, 662 (Bankr. E.D. N.Y. 1997) for some of the criteria that courts look for in determining whether a trust is eligible for bankruptcy, including whether it holds title to property, conducts business for profit, and has centralized management. IIT omits, however, certain other criteria, including whether the trust was created and maintained for the purpose of conducting a business and sharing the profits, whether the beneficial interests are uninterrupted by death of the beneficial owners, and whether beneficial ownership must be transferable without affecting the continuity of the enterprise. *Id.*

Review of the IIT trust agreement shows that IIT was created and maintained for the purpose of administering the trust estate. (AW Ex. 1.) Additionally, the continuity of IIT as an “enterprise” is interrupted when a beneficiary ceases to exist. (AW Ex. 1, § 3.2 (“At such time as the Current Beneficiary ceases to exist, the balance of the trust shall be distributed to the assignee and successors in interest of the Current Beneficiary, pursuant to the Current Beneficiary’s plan for liquidation.”).) These provisions mitigate against finding that IIT is a business trust susceptible to lawsuit and eligible for bankruptcy.⁶

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THE COURT: So, if you went to them without that paper, I assume they would give you precisely what the paper says. They’d be willing to provide services for you at their usual and customary charges.

THE WITNESS: I suppose that’s the case. The only –

THE COURT: What does the paper add? If you’ve had a long-standing relationship with these people and they trust you and they like to do business with you, I suppose they would do business with you on the same terms with or without those agreements.

THE WITNESS: That’s probably the case.

(2/12/08 Tr. pp. 262:25-263:20 (Connolly Cross).)

⁶ IIT cites 760 ILC 5/1 for the proposition that a business trust can be created pursuant Illinois law and can sue in the name of the trustee. The fact that a business trust can be created and can initiate claims does not mean that IIT is a business trust that can be subject to an involuntary bankruptcy proceeding. Moreover, there is no indication in the Trust that it was created pursuant to 760 ILCS 5/1. Furthermore,

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Based on the foregoing, it was not clearly erroneously for the Bankruptcy Court to conclude that IIT is not a business trust and, as such, Allied lacked the effective ability to enforce the Landfill Agreements against IIT.

B. The Bankruptcy Court Did Not Err In Denying IIT's Motion To Allow For The Presentation Of Addition Circumstances.

Following the trial and the Bankruptcy Court's denial of the Motion to Assign, IIT and the Trustee jointly filed the motion titled "Motion to Allow for the Presentation of Additional Circumstances, For the Stay of Enforcement of the Court's Order and to Allow for the Assumption and Assignment of Contracts." ("Motion to Allow") (DN 4182) That motion was allegedly brought pursuant to Fed. R. Civ. P. 59, made applicable by Fed. R. Bankr. P. 9023, and sought to alter the Bankruptcy Court's judgment and/or reopen the proofs so that IIT could submit additional evidence of a transaction in support of assignment and assumption completely different than the one it had presented at trial. (*Id.*)

1. IIT's Motion To Allow Proposes A Entirely New Transaction Created Post-Trial.

The transaction set forth by IIT in its Motion to Allow was an entirely new proposal that shared none of the details of the proposal that it had presented at trial. For example, the Motion to Allow set forth a different assignee, Illinois Generating Station No. 1 Inc., a new employment agreement between Illinois Generating Station No. 1 Inc. and its alleged president, John Connolly, and new loan documents between Illinois Generating Station No. 1 Inc., and its proposed lenders, Scattered and Chiplease. (DN 4182.) After twice supplementing the Motion to Allow with various supporting documents, the motion swelled to include an entirely different

Continued from previous page

even if it was a business trust, it does not resolve the more fundamental, practical problem that the IIT would not sue its Lenders for breach of the loan agreement.

proposal, with a new legal entity as the proposed assignee, and no less than twelve new documents involving different loan agreements, board minutes, employment agreements, shareholder resolutions and assignments. (DN 4182, 4188 and 4199.) All of the documents relating to the new proposed transaction with Illinois Generating Station No. 1 Inc. were created after the conclusion of the trial on February 13, 2008. (Id.)

2. The Bankruptcy Court Did Not Abuse Its Discretion When It Denied The Motion to Allow.

A motion to reopen a trial to receive additional evidence pursuant to Fed. R. Civ. P. 59(a)(2), or to alter a judgment pursuant to Rule 59(e), is subject to the sound discretion of the trial court and its denial is reviewed only for abuse of discretion. *In re Prince*, 85 F.3d 314, 324 (7th Cir. 1996); *Marshall v. Amalgamated Ins. Agency Servs., Inc.*, 523 F. Supp. 231, 232 (N.D. Ill. 1981). It is axiomatic that courts have an interest in seeing that all of the facts that bear on a case are presented at the time of a trial, and litigants have an interest in the finality of a judgment. (See 3/5/08 Tr. p. 9:18-24.) Accordingly, relief under Rule 59 is appropriate only when the movant can clearly establish: (i) newly discovered evidence, (ii) an intervening change in the law, or (iii) a manifest error of law or fact. *Harrington v. City of Chicago*, 433 F.3d 542, 546 (7th Cir. 2006); *Hickory Farms, Inc. v. Snackmasters, Inc.*, 509 F. Supp. 2d 716, 719 (N.D. Ill. 2007)(Kennelly, J.).

A Rule 59 motion based on newly discovered evidence must clearly establish that both the newly discovered evidence, as well as the facts that it supports, were in existence at the time of trial. *Peacock v. Board of Sch. Comm'rs*, 721 F.2d 210, 214 (7th Cir. 1983); Wright, Miller & Kane, *Federal Practice and Procedure: Civil* 2d § 2808. A Rule 59 motion should not be granted “merely because the losing party may be able to present a better case in another trial.” 12 *Moore’s Federal Practice* § 59.13[4] at 59-95 (Matthew Bender 3d ed.).

Other than merely invoking Rule 59 by name, the Motion to Allow was silent on the grounds for the motion. The motion did not set forth a claim a manifest error of law or fact, nor did it mention an intervening change in the law. Thus, although IIT did not say so directly, either in its Motion to Allow or in its brief on appeal here, it set forth the new proposal as the equivalent of newly discovered evidence. (DN 4812.)

On its face, the Motion to Allow failed to satisfy even the threshold requirements of Rule 59 because it failed to offer a single allegation how the proffered “additional circumstances” constituted “newly discovered evidence.” (*Id.*) It is obvious why. Neither the proposal to make Illinois Generating Station No. 1 Inc. the assignee of the Landfill Agreements, nor any of the documents relating to that proposed transaction, were in existence at the time of the trial. This is evident from the exhibits that are attached to the Motion to Allow and its subsequent supplements, all of which demonstrate that they were created *after* the conclusion of the trial on February 13, 2008. (DN 4812, 4188 and 4199.) Thus, the evidence IIT sought to submit was not newly discovered evidence at all. Instead, it was newly *created* evidence that IIT manufactured after the Bankruptcy Court ruled against the original proposal that it presented at trial. Because neither the “additional circumstances” offered by IIT, nor the facts that those circumstances alleged to support were in existence at the time of the trial, they do not qualify as newly discovered evidence under Rule 59. *Peacock v. Board of Sch. Comm’rs*, 721 F.2d 210, 214 (7th Cir. 1983).

In addition to IIT’s failure to set forth newly discovered evidence, it would have been inequitable for the Bankruptcy Court to grant the Motion to Allow in light of the parties’ dealings and the long expired deadline for bringing motions to assume and assign. By order of court, all remaining motions to assume and assign were to be brought by July 7, 2007. (DN

3462.) It was pursuant to that order that the Trustee, Scattered and Chiplease ultimately designated IIT as the proposed assignee of the Landfill Agreements in conjunction with the Motion to Assign. (DN 3478.) After that, Allied and Peoria spent more than a year and a half of time, and considerable expense, conducting extensive discovery and prepping for trial against IIT, the Trustee and the Lenders on the assumption and assignment proposal offered by them. As the Bankruptcy Court correctly recognized, to allow IIT and/or the Trustee to propose an entirely new transaction only after failing to meet its burden at trial on its original proposal, and long after the court imposed deadline of July 7, 2006 had passed for motions to assume and assign, would be improper:

The fact is that the trustee had an ample period of time to propose what the trustee wanted to propose as an appropriate assignee for the gas rights agreements that were involved in this trial. The parties spent a substantial amount of time preparing for that trial. The court spent a substantial amount of time hearing it and ruling on it.

As I indicated earlier, the evidence presented at trial was plainly insufficient to establish the trustee's obligation, burden of proof. To show adequate assurance of future performance and to allow a new proposal to be presented after the court made the ruling and well after the deadline for making motions to assume or assign had passed would not be appropriate. The court's discretion then being exercised against, the motion will be denied.

(3/5/08 Tr. p. 11:7-23.)⁷

Under these circumstances the Bankruptcy Court did not abuse its discretion when it denied the Motion to Allow. *See 12 Moore's Federal Practice* § 59.13[4] at 59-95 (Matthew Bender 3d ed.)(Rule 59 motion not proper "merely because the losing party may be able to present a better case in another trial."). In denying the motion, the Bankruptcy Court also

⁷ In addition to analyzing IIT's Motion to Allow under Rule 59, the Bankruptcy Court also addressed the necessary showing of a motion brought pursuant to Rule 60(b). As IIT's motion failed to satisfy the standard required of a Rule 59 motion, it would also fail to satisfy Rule 60(b), which is an extraordinary remedy granted only in exceptional circumstances. (*See* 3/5/08 Tr. pp. 8:20-11:23); *Dickerson v. Board of Ed.*, 32 F.3d 1114, 1116 (7th Cir. 1994).

dispensed with IIT's claim, made both below and here on appeal, that the Motion to Allow was appropriate because the Court had "invited" IIT to make a revised proposal:

In the present [Motion to Allow], the Chapter 7 trustee seeks to reopen the trial to provide additional assurance of future performance to support assumption and assignment. The authority relied on for this new proposal is, quote, 'the court's invitation to the trust to revise its proposal for showing adequate assurance of future performance.' The court made no such invitation.

What I did in commenting on the inadequacy of what was produced as evidence of adequate assurance is to give some idea of what might have been assurance of adequate – excuse me, adequate assurance of future performance. I noted the kinds of alternatives that might have given parties assurance that the funds would actually be deposited. I mentioned an escrow account as a mechanism that might have provided that kind of assurance. But that was not to say that the court would entertain a motion to reopen the trial to allow the trustee or the proposed assignee to create a new transaction that would satisfy the kinds of requirements that the court indicate.

Had there been time to file a new motion to propose a different arrangement than what was proposed at trial, it might very well have been appropriate for such a thing to be proposed. The problem is that the deadline for assumption and assignment of the contracts has long passed. The only transaction that was proposed within that deadline was the one that the court found to be inadequate.

(3/5/08 Tr. pp. 6:22-8:1; *See also* 3/11/08 Tr. pp. 2:23-8:8.)

Finally, even if the Bankruptcy Court had considered the evidence of IIT's alternative proposal, the new proposal failed to address the Bankruptcy Court's original basis for denying the Motion to Assign, i.e. the lack of adequate assurance that IIT could access the funds necessary for it to perform. (2/13/08 Tr. p. 261:2-7.) Not a single document submitted with the Motion to Allow contained a financial or income statement for the Lenders, evidence of their assets, or evidence of their ability to fund the loan. Accordingly, for all of the reasons set forth above, the Bankruptcy Court did not abuse its discretion in denying the Motion to Allow.

C. Allied, Sangamon, And American Disposal Have Standing In This Case.

After approximately three years of litigation, IIT asserts for the first time in its opening brief that Allied lacks standing to contest the Motion to Assign because it has not established its pecuniary interests in all three of the Landfill Agreements. Tellingly, IIT does not provide a single citation to the record where it raised such an argument below and, moreover, fails to mention to this Court that it has previously acknowledged Allied's interest in all three of the Landfill Agreements.

IIT's standing argument is flawed for three reasons. First, the Motion to Assign was brought by the Trustee, not IIT, and any argument regarding standing is not IIT's argument to make. Second, even if IIT could properly make such an argument here, because it failed to do so below, either in the years preceding the trial or during it, the argument is waived. Third, IIT's own conduct and statements in the Bankruptcy Court demonstrate that IIT has acknowledged Allied as the proper counter-party to the Landfill Agreements.

1. IIT Cannot Properly Raise A Standing Objection.

The Motion to Assign was brought solely by the Trustee. Although the Designation Rights Agreement gave the Lenders the right to designate those contracts they wished the Trustee to assume and assign to them, it was the Trustee's burden to move the Court for the assumption and assignment before it could take place. This is so because the Landfill Agreements were the property of the bankruptcy estate, notwithstanding the execution of Designation Rights Agreement, unless and until the Bankruptcy Court approved the assumption and assignment of those agreement to the Lenders. Although the Lenders, as the proposed assignees of the Landfill Agreements, were required to demonstrate that they could cure any defaults and provide adequate assurance of future performance pursuant to Section 365, nothing in the Designation Rights Agreement gave them or their proposed designee here, IIT, the right to

raise any other legal claims or constitutional challenges on behalf of the Trustee. Thus, any argument regarding the standing of the non-debtor parties to the Landfill Agreements is the province of the Trustee, not IIT.

Significantly, the Trustee never challenged Allied's standing either in the case below or on appeal here. In fact, the opposite is true. The Trustee has repeatedly acknowledged in court filings that Allied is the counter-party to the Landfill Agreements. As far back as November 30, 2005, the Trustee identified Allied as the counter-party to the Landfill Agreements in an agreed order. (DN 2840.) Thereafter, the Trustee unfailingly referred to Allied as the counter-party to the Landfill Agreements in each of his motions and agreed orders seeking to extend the date to assume and assign those agreements leading up to the execution of the Designation Rights Agreement. (DN 2976 and 3185 pp. 3-4.)⁸

Even in the Trustee's first Motion to Assume and Assign filed on April 28, 2006, which was after the Designation Rights Agreement had been signed giving the Lenders the sole authority to identify the contracts to be designated for assumption and assignment, Allied was *specifically* identified as the counter-party to the contracts at the Litchfield, Bloomington and Sangamon landfill sites. (DN 3249, Ex. A, pgs 1, 5, and 9.) Thus, the Trustee has never expressed a single doubt about Allied's standing in this case or called into question its status as the non-debtor party to the Landfill Agreements at issue. To the contrary, as demonstrated

⁸ The agreed orders and motions that comprise Docket Nos. 2840, 2976 and 3185 cited above were not made part of the record on appeal by Allied. This is due to IIT's failure to raise the standing issue substantively during trial or to identify the issue in its Notice of Appeal. But for IIT's dilatory conduct, Allied would have designated those items in its supplemental record on appeal. Notwithstanding the absence in the record on appeal, because they are pleadings found on the Bankruptcy Court's official docket, they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned," and this Court can and should take judicial notice of them pursuant to Fed. R. Evid. 201(b).

above, the Trustee has repeatedly and affirmatively represented to the Bankruptcy Court that the opposite is true.

2. IIT Has Waived Any Objection To Allied's "Standing."

Even if IIT had the ability to raise what it deems a standing objection on appeal, its objection has been waived. Although the question of standing is generally not subject to waiver, standing arguments that do not implicate the court's constitutional jurisdiction can be waived. *In re Aurora Home Servs., Inc.*, No. 99 C 7898, 2000 WL 1468314, *1 (N.D. Ill. 2000); *Lee v. Deloitte & Touche LLP*, 428 F. Supp. 2d 825, 830-31 (N.D. Ill. 2006) (objections to standing based upon prudential considerations such as objections to the real party in interest are waived if not timely raised).

IIT couches its slender, one paragraph argument as a standing objection, yet upon close examination it is clear that IIT's claim is more properly characterized as an objection that Allied is not the proper party in interest to the Landfill Agreements. IIT does not argue that the counter-party to the Landfill Agreements lacks a pecuniary interest in the question of whether those agreements are assumed and assigned to IIT, nor could it in good faith do so. IIT does not directly contend that Allied does not have an interest in the Landfill Agreements.⁹ Instead, IIT objects only that there are no documents "*in the record*" supporting Allied's status as the assignee of the Landfill Agreement. (Appellant's Brief p. 21.) But that is a failure of IIT's own making.

⁹ Similarly, IIT has never argued, either on appeal or in the case below, that Allied is not the actual owner of the landfills. As the former president of RTC, and IIT's trustee, John Connolly testified at trial that Allied was present at and engaged in work at each site. (2/12/08 Tr. pp. 96:17-98:12.) It follows that if Allied owns each landfill, and is engaged in the work at each landfill, that it would logically hold rights to the Landfill Agreements at each landfill.

Not once did IIT raise the issue of Allied's interest in the Landfill Agreements during the year and a half that the parties engaged in multiple rounds of discovery. Not once did IIT seek to depose an Allied witness on this issue. And not once did IIT file a motion in limine or otherwise seek to bring this issue to a ruling before the Bankruptcy Court prior to trial. IIT never examined a single witness at trial on this issue and, other than a fleeting mention during opening statements relating to just one of the three agreements, IIT never mentioned the issue at trial.¹⁰

Under these circumstances, IIT has waived any objection to Allied's standing based on a proper party in interest argument. *International Travelers Cheque Co. v. BankAmerica Corp.*, 660 F.2d 215, 224-25 (7th Cir. 1981) ("It would be patently unfair for this appellate court to consider the real party in interest argument now, when the parties have developed no factual record on this point and the district court did not have the opportunity to consider it."); *United Healthcare Corp. v. American Trade Ins. Co.*, 88 F.3d 563, 569 (8th Cir. 1996) (objection waived when raised one week before trial); *Rogers v. Samedan Oil Corp.*, 308 F.3d 477, 483-84 (5th Cir. 2002) (objection waived when raised one day before trial).

Lastly, IIT's 11th hour "standing" argument is absurd on its face in light of the history of litigation involving the Landfill Agreements. Before an executory contract can be assumed and assigned under the Code (or the Designation Rights Agreement), a non-debtor party to that contract must be given notice of the proposed assumption. Fed. R. Bankr. P. 6006(c). IIT has not

¹⁰ The only mention of this issue at trial was a brief reference by IIT's counsel during opening statements questioning Allied's interest in the Springfield agreement (a/k/a Sangamon). Counsel for Allied responded that because Allied's right to enforce the Sangamon agreement had never been put in controversy during three years of litigation with IIT and the Lenders, evidence of the assignment to Allied was likely not on the exhibit list. (See 2/12/08 Tr. pp. 20:15-21:3.) The issue was not raised again during trial. The absence of any objection by IIT's counsel to either of the other two agreements (Bloomington and Litchfield), is at least an implicit admission by IIT that Allied is the counter-party to those agreements and reveals the opportunistic nature of IIT's claims about standing brought here on appeal.

identified an entity other than Allied that was given notice of the assumption and assignment of the Landfill Agreements. Nor has IIT identified an entity other than Allied that has ever appeared in the bankruptcy case during its nine-year term to assert rights relating to the Landfill Agreements or that claimed an interest in them at trial. Moreover, IIT offers no explanation why, if the Allied entities did not have an interest in the Landfill Agreements, they would have appeared and engaged the Trustee, the Lenders and IIT in costly litigation over many years. The simple answer is that they did so because their interests were at issue.

3. IIT Has Admitted That Allied Is The Proper Counter-Party To The Landfill Agreements.

IIT has carefully framed its objection to Allied's standing as one premised on the lack of any "documents in the record" that evince an assignment of the Landfill Agreements to Allied. (Appellants Brief, p. 21.) This is in contrast to a direct claim by IIT that Allied is not the counter-party to those contracts. IIT has not, and could not, make such an argument in good faith because it knows that it previously admitted, in both pleadings and a stipulation submitted to the Bankruptcy Court, that the Allied entities were, in fact, proper counter-parties to the Landfill Agreements at issue. Accordingly, IIT should be bound to those admissions here notwithstanding its attempt to avoid them now.

In January 2007, IIT and Allied filed a Joint Motion To Extend Trial Date in the Bankruptcy Court. That motion requested an extension of the trial that was set to commence on the preliminary issue of the cure costs due on the Landfill Agreements. (DN 3807).¹¹ At

¹¹ For the same reasons discussed in footnote 8 above, the Joint Motion To Extend (DN 3807) and the order granting same (DN 3819), were not included in the record on appeal. Nevertheless, this Court can take judicial notice of that motion pursuant to Fed. R. Evid. 201(b).

paragraph 2 of that motion, which was signed and filed by counsel for IIT, it was represented that:

2. Specifically, the Trial concerns certain issues relating to the proposed assumption and assignment of the following three contracts into which the Debtor has entered:

a. An Agreement with ESG Watts relating [to] the Springfield landfill entitled “Agreement”, which is dated May 26, 1995. Allied Waste Industries, Inc., and Sangamon Valley Landfill, Inc. are the assignees of the rights of ESG Watts under that agreement;

b. An agreement *with* Allied Waste Industries, Inc. and American Disposal Services of Illinois, Inc., relating to the Litchfield landfill entitled “Agreement”, which is dated December 30, 1006; and

c. An agreement with Liberty Waste of Ohio relating to the Bloomington landfill entitled “Agreement” dated December 30, 1995 by and between the DEBTOR and Liberty Waste of Ohio. Allied Waste Industries, Inc. and American Disposal Services of Illinois are the assignee of the rights of Liberty Waste of Ohio under that agreement.

(DN 3807)(emphasis added).) This motion was granted by the Bankruptcy Court. (DN 3819.) In light of the unequivocal representations made in pleadings by IIT’s counsel to the Bankruptcy Court, it appears that IIT only contests Allied’s interest in the Landfill Agreements when it is in its benefit to do so.

Furthermore, just two months after the filing motion to extend cited above, IIT and Allied entered into a stipulation relating to all three of the Landfill Agreements. The Stipulation In Lieu of Trial, dated March 13, 2007, was an agreement between Allied and IIT as to the cure cost amounts that IIT would pay to Allied in the event that the Bankruptcy Court determined that there was adequate assurance of future performance and the Landfill Agreements were assigned to IIT. (Docket No. 3875.) Pursuant to the Stipulation, IIT was contractually bound to first satisfy the terms of the Stipulation as a condition precedent to beginning any work authorized by the Landfill Agreements. IIT would not have entered into a stipulation with Allied that

controlled its duties and obligations under the Landfill Agreements, and which was a modification of the Landfill Agreements, unless it understood Allied to hold the rights to those agreements.

Accordingly, IIT should be bound by the admissions it made in the Bankruptcy Court, both in its conduct and its legal filings, and this Court should reject any argument that Allied is not the proper party in interest or lacks standing here in regard to the Landfill Agreements.

VI. CONCLUSION

For all of the foregoing reasons, the Bankruptcy Court's decision was not clearly erroneous or an abuse of discretion and should therefore be affirmed.

Dated: August 15, 2008

Respectfully submitted,

/s/ Robert S.O'Meara

Robert S. O'Meara

Adam R. Chiss

Ann Elizabeth Pille

Reed Smith LLP

10 South Wacker Drive

Chicago, IL 60606

(312) 207-1000

*Attorneys for Allied Waste Industries, Inc.,
American Disposal Services of Illinois, Inc., and
Sangamon Valley Landfill, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2008, a copy of the foregoing **Brief of Appellees Allied Waste Industries, Inc., American Disposal Services of Illinois, Inc., and Sangamon Valley Landfill, Inc.** was served by all registered users of the Court's ECF filing system

/s/ Robert S. O'Meara

Robert S. O'Meara

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)
) No. 99 B 35434
RESOURCE TECHNOLOGY CORPORATION,)
) Chicago, Illinois
) February 12, 2008
Debtor.) 10:30 a.m.
) 1:00 p.m.

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE EUGENE R. WEDOFF

APPEARANCES:

MR. PETER SCHMIDT
MR. GREGORY JORDAN
on behalf of Illinois Investment Trust 92-7163;

MR. GEORGE APOSTOLIDES
on behalf of Jay Steinberg, not individually but
solely as Chapter 7 trustee;

MR. DAVID BOHAN
MR. ROBERT O'MEARA
on behalf of Allied Waste Industries;

MR. LINDA KUJACA
on behalf of the City and County of Peoria.

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I N D E X

WITNESS:	DX	CX	REDX	RECX
ANDREW JAHELKA	27	42	66	71
		64		
JOHN CONNOLLY	74	179	271	
		264		

1 THE CLERK: Taking up the court's 10:30
2 trial, Resource Technology Corporation, 99 B 35434.

3 MR. SCHMIDT: Good morning, Your Honor.
4 Peter Schmidt and Gregory Jordan on behalf of
5 Illinois Investment Trust 92-7163.

6 MR. APOSTOLIDES: Good morning, Your
7 Honor. George Apostolides on behalf of Jay
8 Steinberg, not individually but solely as Chapter 7
9 trustee.

10 MS. BOHAN: Good morning, Your Honor.
11 David Bohan on behalf of Allied Waste Industries.

12 MR. O'MEARA: Robert O'Meara on behalf of
13 Allied as well, Your Honor.

14 MS. KUJACA: Good morning, Your Honor.
15 Linda Kujaca on behalf of the City and County of
16 Peoria.

17 THE COURT: Okay. There are a few
18 matters that need to be taken up preliminary to our
19 trial, these motions in limine. I am inclined to
20 hear argument on Allied's motion respecting the IEPA
21 documents, if you'd like to address that.

22 MR. JORDAN: Certainly, Your Honor. As I
23 understand the situation, Allied's position in the
24 case is that the history of compliance or
25 noncompliance by Resource Technology Corporation and

1 its employees is a factor in determining whether
2 adequate assurance of future performance exists or
3 not. And to the extent that RTC is not unique and
4 that there are -- that this is something that
5 happens -- people, including Allied, then it's
6 probative of -- to the extent of -- or the matters
7 to the weight that Your Honor should place on
8 previous and sometimes extremely old compliance
9 issues that Allied would like to offer, or the City
10 and County of Peoria might want to offer regarding
11 compliance by RTC.

12 Now, I note, Your Honor, that Allied
13 says in its motion in limine that there's a
14 reference to the Livingston landfill and the Pontiac
15 landfill, and that that's not an issue in this case,
16 what happened at the Livingston and Pontiac
17 Landfill. Well, it's not -- I don't think it's an
18 issue in the case, and I have no problem keeping all
19 of the activities other than the sites in question
20 out of the case. But you can't have your cake and
21 eat it too.

22 THE COURT: Well, actually, I think they
23 may be able to, and here's the reason why: The
24 question of the ability of IIT or its nominee to
25 provide the services required by the contract in

1 question here is something that has to be looked at
2 in terms of IIT or its nominee. What Allied has
3 done in other places really is irrelevant to that
4 question.

5 Even as you make your argument
6 today, Mr. Jordan, what you're talking about is the
7 general difficulty of people in complying with the
8 IEPA or other environmental regulations. Well, if
9 you want to produce an expert witness to testify
10 about the general difficulty of complying with
11 regulations and the fact that everybody who operates
12 a landfill runs into trouble with environmental
13 regulators, I'd be happy to hear that. But you
14 really can't establish that general proposition by
15 pointing to the specific difficulties that Allied
16 may have had in a particular landfill. Simply not
17 relevant, not probative. I'll sustain this motion,
18 grant the motion.

19 Okay. Next, we have a motion that
20 is brought by Mr. Jordan to bar testimony regarding
21 certain permits, and I'll hear argument against that
22 if...

23 MS. KUJACA: Do you want to start?

24 MR. O'MEARA: Go ahead.

25 MS. KUJACA: Section 7 and 8 of the

1 Peoria lease deals specifically with the ability of
2 RTC to provide adequate permitting for the Peoria
3 site. And the issue of whether IIT or RTC actually
4 has a valid IEPA permit or will have so in the
5 future is critical to whether they can provide
6 adequate assurance of future performance in this
7 case.

8 THE COURT: Yeah. Well, can this witness
9 provide any relevant evidence on that point?

10 MS. KUJACA: Yes, he can. He is the
11 CAAPP unit manager regarding the air permits for the
12 Illinois EPA. He is the guy who can talk about the
13 permitting.

14 THE COURT: The motion suggests that the
15 information he has is not probative on this point,
16 and cites deposition testimony to establish that.

17 MR. O'MEARA: Your Honor, if I can add
18 something as well? Mr. Connolly has testified
19 already at his deposition in this case that these
20 permits are either in effect or have been renewed or
21 will be easily transferred from RTC to IIT.

22 Mr. Reed's testimony is in rebuttal to that, and
23 this is defensive to that, and responds to what Mr.
24 Connolly has already testified about in the case.

25 THE COURT: Mr. Jordan or --

1 MR. JORDAN: Well, first of all -- I'll
2 let Mr. Schmidt do it. But I would note for the
3 record that Mr. Reed is not Allied's witness, and,
4 you know, I'm not quite sure why Allied has any
5 right to speak with regard to Mr. Reed or any
6 testimony he might have. We're having two trials
7 together for the convenience of the court, but he's
8 not on their witness list, he's not on our witness
9 list, and I don't think Allied has any right to
10 examine him or to offer anything he says regarding
11 anything in the issues regarding the Bloomington,
12 Linchfield, or Sangamon landfills.

13 You can address --

14 MR. SCHMIDT: I would just add that
15 Allied also did not identify Mr. Reed as an
16 individual with knowledge in their interrogatory
17 responses.

18 But, more fundamentally, Mr. Reed's
19 testimony was that certain applications have been
20 received. They're sitting on his desk. He has not
21 made a decision on that. Or that if applications
22 are made for permits in the future, he doesn't know
23 how he's going to rule on them. He would have to go
24 through the process. There's an elaborate process
25 that the IEPA goes through to determine whether or

1 not --

2 THE COURT: Okay. Let me say this then:

3 If Mr. Reed is going to testify, it appears to me he
4 would be testifying as a rebuttal witness, and I
5 would consider whatever testimony he might give at
6 that time. I won't grant a motion in limine as far
7 as his ability to testify as a rebuttal witness, but
8 I will not expect him to be called in the case in
9 chief, given the argument that's just been taking
10 place here for either of the nonIIT parties.

11 Okay. So that will be the ruling on
12 this one.

13 MR. JORDAN: Thank you, Your Honor.

14 MR. SCHMIDT: Thank you, Your Honor.

15 MR. O'MEARA: Thank you.

16 THE COURT: I think then we are ready to
17 hear opening statements.

18 MR. SCHMIDT: Your Honor, as has been the
19 habit in these proceedings, we're the real party in
20 interest, so we'll make the opening statement --

21 THE COURT: Please.

22 MR. JORDAN: If it please the court, Mr.
23 Schmidt and I represent the Illinois Investment
24 Trust, which I'm going to try to refer to as "the
25 trust" as much as possible because I have a hard

1 time tripping over IIT.

2 THE COURT: Well, there's an educational
3 institution to the south here that would be possible
4 to confuse with this.

5 MR. JORDAN: Possibly. What we're here
6 is in the final part in the process of the
7 assumption and assignment of the contracts between
8 RTC and the City and County of Peoria and RTC and
9 Sangamon Valley Landfill, Inc., the Allied -- or
10 American Disposal and Allied Waste Industries
11 relating to landfills in Litchfield, Illinois,
12 Bloomington, Illinois, and Sangamon, Illinois.

13 The cure issues have been resolved
14 through stipulations by the parties. So what we're
15 here today is just to talk about whether the
16 assurances that our client can provide are adequate
17 to allow for the assumption and assignment or really
18 the assignment of the contracts.

19 Now, the first site, Litchfield, we
20 have a December 30, '96, contract. It's a small
21 site. It's already been assumed by a January 3rd,
22 2002, order, and the trustee is requesting that it
23 be assigned to the trust. At this time RTC does not
24 need a permit for the Litchfield site. There are no
25 operations there. There have never been any

1 operations there.

2 After the site, there will be
3 testimony saying -- or after the assignment, there
4 will be testimony indicating that the trust will
5 seek a construction permit to build an energy
6 conversion facility, and that will be after Allied
7 builds the gas control and collection system, the
8 GCCS, at the site. In the stipulation there's an
9 amount of money that the trust is going to need to
10 pay to Allied, put up a bond. And to the extent of
11 the timing, there's interest that's earned.

12 The testimony would be that the
13 construction permit process is generally a short
14 process, and that it's anticipated that once Allied
15 is finished, it would be six to twelve months to
16 build. I think that site is likely to go online in
17 2011, so there's a lot of time between now and then
18 for all of the permitting issues and everything else
19 to get worked out.

20 There will be a CAAPP permit that's
21 needed, a Clean Air Act Permit that's needed. And I
22 think that the testimony will be that that's a
23 three- to five-year process from application to
24 approval, and that there's actually a permit shield
25 that allows the permit applicant to operate during

1 the process that that is going on. And the site
2 will be -- need to be built in that time and go
3 online.

4 There will be testimony indicating
5 that there are funds that are going to be offered or
6 loaned by Chiplease and Scattered, primarily
7 Scattered, which is a corporation that Andrew
8 Jahelka, Drew Jahelka, is president of. They have
9 \$3 million now. The testimony will be that probably
10 there will be draws in tranches about a
11 million-two-fifty this year, and then that will get
12 paid, and then the Litchfield site will go on, there
13 will be another draw, and then that will be paid
14 back. And then, finally, Bloomington, there will be
15 a draw in about, I think, 2013 or 2015, Mr. Connolly
16 will testify to that, and that will be drawn and
17 paid back.

18 We anticipate that the Peoria site,
19 being the one that is actually operating now, would
20 go on soon. There's a stipulation. Testimony will
21 show that there's a stipulation, it's in evidence
22 already and no one objected, between Peoria and IIT.
23 And that stipulation sets forth the various regimes
24 of things that Peoria and IIT agree have to be done
25 in order for this to be successful.

1 And the stipulation has defaults.

2 So if IIT doesn't perform, then the trust is out.

3 That's really the best adequate assurance that they
4 have, in addition to the fact that the money exists,
5 that things are going to happen and that they are
6 not going to have problems.

7 With regard to the Litchfield site,
8 the plan is for AmerenCILCO to buy gas that's
9 scrubbed and put into a pipeline. AmerenCILCO and
10 the trust have parameters of an understanding on
11 that. And, you know, in order to have an agreement
12 on something like this, you kind of have to have the
13 assignment. So with any luck, this matter on
14 Litchfield will go forward.

15 With regard to Bloomington, it's a
16 contract between RTC and John Sexton Contractors.
17 It's a relatively small site, but it does have
18 sufficient gas for something to happen. IIT has
19 requested that the trustee assign the contract to
20 them, and the trustee is willing to do so.

21 At this time RTC doesn't have, nor
22 does it need a permit at Bloomington. There are no
23 operations there now. There's a handful of wells
24 that were run over during a waste filling operation.
25 And what's going to happen in that site is the same

1 as with the Litchfield site, Allied would build the
2 gas collection system, IIT will pay for it.

3 Obviously in all three -- this is
4 going to happen at all three sites. The gas
5 collection control system is going to be built to
6 Allied's specifications since Allied is going to be
7 building the gas collection and control system.
8 Allied is going to need to finish the expansion on
9 this site in Bloomington. This one is the one
10 that's in the longest horizon because I think Allied
11 indicates that it's going to take them a long time
12 to finish the site.

13 The plan for Bloomington is gas
14 cleanup and medium grade BTU gas sale. There's an
15 existing Cargill gas line to tap into. And even if
16 that weren't available, there's a Nicor Gas line to
17 tap into. And there have been, in fact, several
18 conversations with Nicor in that regard.

19 With regard to Springfield, that was
20 an operating site, and what it was was an agreement
21 between ESG Watts and RTC entered into on May 26th,
22 1995. As we have indicated to Allied previously,
23 we're not aware of what interest Allied has in the
24 Sangamon Valley landfill. I'm sure that they can
25 put on some sort of evidence showing that they, in

1 fact, have an interest in the Springfield landfill
2 by assignment from ESG Watts because we're not aware
3 of that, and I think we've alerted the court and
4 Allied to that a long time ago.

5 This is a relatively small site,
6 but, again, there's sufficient gas for something to
7 happen here. IIT has requested that the trustee
8 assign the contract to it, and the trustee is
9 willing to do so. RTC holds a permit there at the
10 site now. However, once the Allied -- what Allied
11 has at the site and what has been a problem with the
12 site is the fact that they don't have a final CAAPP
13 and the site is overheight. Allied has to chop out
14 or move or whatever these fellows do, move the
15 overheight out. And when they do that, it takes out
16 the gas collection and control system.

17 Now, there's some, you know, perhaps
18 disagreement as to whether the trust would need to
19 file for a new permit. But even if it did, it would
20 be able to file the construction permit and then
21 file a CAAPP permit and work with the IEPA over that
22 process and operate in the permit shield while the
23 permit is pending.

24 There are some small wells there.
25 There was a fire, as I think Your Honor knows, at

1 the site. Certain wells were removed because of the
2 overheight. As to each of these sites, IIT -- I'm
3 sorry, Mr. Connolly, not IIT, Mr. Connolly has
4 performed visits recently as last week looking at
5 the sites to see the status of the sites, in
6 addition to see the status of the removal of the
7 overheight.

8 The plan for Springfield is to
9 sell -- to create electricity through engines with
10 an alternative plan of selling gas into pipelines,
11 and there is a nearby pipeline. It's a contract
12 with AmerenCILCO to sell the electricity to them.
13 Our client will have to pay monies to Allied under
14 the stipulation, and they'll have to pay monies,
15 about 300,000 to \$500,000, to move engines and get
16 them into running -- permit. We definitely will
17 need a construction permit. Allied is going to need
18 to finish the expansion, which I think they think is
19 going to finish this year, and we'll move forward on
20 that.

21 With regard to Peoria, that's a
22 December 30, 1996, contract with RTC and Liberty --
23 I'm sorry, RTC and the City and County of Peoria.
24 It's a medium-sized site and has sufficient gas.
25 IIT has requested the trustee sign it, and the

1 trustee is willing to do so. There is a CAAPP
2 permit, Clean Air Act Permit, there now. The
3 operations are continuing.

4 There was a change in the site.
5 There was a fellow, Vince Muir, who was operating
6 the site. And the testimony will be that in
7 December Mr. Muir died, and now a third party
8 unrelated to the trust is managing the site. And
9 what's going to happen here is that the trust will
10 sell its gas to AmerenCILCO -- or sell electricity,
11 rather, to AmerenCILCO. Under the stipulation with
12 Peoria, they have to bring another engine on site,
13 and they're working on that, and they think that
14 will be soon completed. And then once they do that,
15 this summer they're going to bring a third engine on
16 site. I don't think there are any need for any
17 permits at this site.

18 One of the items that needs to be
19 taken care of at the site is stack testing. And, in
20 fact, there have been various problems or notices
21 from the IEPA over the years for things like
22 compliance in stack testing. And the testimony will
23 be is that -- and I don't think it's hugely
24 surprising. You have a company first that's in
25 bankruptcy and, as a result of a bankruptcy, living

1 on a string, and then with a Chapter 11 trustee, and
2 then with a Chapter 7 trustee. And so it really
3 lacked the monetary ability to do a lot of the
4 things that the people who were operating or running
5 the company would have liked to do.

6 And now, when they have a \$3 million
7 line of credit with a substantial ability to draw
8 upon it, the idea is is to move forward to create a
9 relationship with the IEPA, to work with the City
10 and County of Peoria, including attending their
11 monthly meetings and meeting with them on a more
12 regular basis to try to make sure to head off any
13 problems in advance, and same with Allied.

14 One of the -- you know, the reason
15 why I don't, with all due respect to Allied and
16 Peoria, think that the issues regarding compliance
17 in the past are relevant is because I think the
18 evidence is going to show that it was a function of
19 money and, to a certain extent, motivation. We had
20 trustees, and these trustees were not willing to
21 spend monies in the way in which it was hoped it
22 would. For instance, \$600,000 would have been spent
23 on Congress in early '05. That could have headed
24 off a lot of the problems there. And Mr. Szilagyi,
25 the testimony will be, refused to -- the request to

1 pay those kinds of monies.

2 IIT has the personnel. In addition,
3 it has new and other contracts with third parties to
4 operate. It has the motivation and it has the
5 people who can do it. So we think -- and it will
6 under the Allied stipulation. It's required to
7 obtain a performance bond. And the testimony will
8 be that it will be very easy, actually, for a
9 performance bond to be obtained.

10 And so for that reason, we think the
11 evidence will show that adequate assurance as to
12 each of the four sites is going to be provided, and
13 that these contracts may be assumed and may be
14 assigned. Thank you very much, Your Honor.

15 THE COURT: Okay. Thank you.

16 Mr. Bohan, do you want to go next on
17 behalf of Allied?

18 MS. BOHAN: I'll try to be very brief,
19 Your Honor. The burden in this case is on the
20 trustee as the moving party and IIT as its proposed
21 assignee to show that IIT has the financial and
22 operational capacity, competence, and willingness to
23 perform these contracts. And we think there will be
24 an abject failure of proof on that scope, Your
25 Honor.

1 IIT is a trust that was formed
2 approximately 15 years ago for the purposes of
3 engaging in a dividend reinvestment program. It has
4 essentially no history of business operations with
5 respect to the operations of the landfills, the
6 collection of gas, the conversion of gas to
7 electricity. For that matter, Your Honor, it's
8 never been engaged in any ongoing business
9 operations whatsoever.

10 So to overcome the failure of -- and
11 it has no assets to speak of until very recently,
12 had no exposure, no experience whatsoever with
13 respect to this entire industry.

14 To overcome those failures, the
15 persons who controlled Scattered and Chiplease
16 arranged to install as the current trustee of the
17 trust Mr. Connolly, and for him to engage as
18 necessary some former employees of RTC. But we
19 think, Your Honor, that there will be no proof,
20 certainly none from Mr. Connolly's -- in Mr.
21 Connolly's background that would demonstrate that he
22 individually or with the assistance of his former
23 employees, former comrades from RTC, have the
24 capability to perform these contracts.

25 Their record is one, Your Honor, of

1 environmental noncompliance, consistent, repeated
2 defaults at different landfills of which they've
3 sought to operate. And as a result, we think the
4 trustee and IIT will fail in their burden of proof.

5 Your Honor, I have two very minor
6 points to bring up. I believe Mr. Jordan may have
7 misspoke when he said that the contracts in which
8 Allied has an interest, those involving Litchfield,
9 Bloomington, and Sangamon, have already been
10 assumed. In fact, the trustee's motion to assume
11 those contracts is what's before the court today.
12 It's the trustee's motion to assume and assign them
13 to the designee of Chiplease and Scattered. None of
14 those three contracts has been assumed, Your Honor.

15 And, second, with respect to the
16 Sangamon site, Your Honor, Allied, in fact, did
17 retain the right to enforce that agreement. And, in
18 fact, although we've been involved in this
19 litigation for, I think, three years or more with
20 Mr. Jordan, our right to enforce that agreement,
21 notwithstanding the asset purchase agreement to
22 Mr. Watts, has never really been in controversy. If
23 necessary, we will produce the asset purchase
24 agreement and identify for the court the specific
25 clause that reserves to Allied the right to enforce

1 that contract. But it's never been an issue, Judge.
2 It may not even be on our exhibit list for that
3 reason. Thank you, Your Honor.

4 THE COURT: Thank you.

5 Ms. Kujaca.

6 MR. JORDAN: Your Honor, just to clarify,
7 I said it was a Litchfield contract, and it was
8 unassumed on January 3rd, 2002.

9 MS. KUJACA: Thank you, Your Honor. I'll
10 be brief as well, and I don't want to go over the
11 same territory that Mr. Bohan did.

12 Peoria has stipulated with IIT as to
13 what will generally be necessary to cure the
14 monetary and nonmonetary defaults in the lease. So
15 the question remaining under 365 of the Code is
16 whether IIT can provide the adequate assurance of
17 future performance. Peoria agrees with Allied that
18 IIT bears the burden of proof in this issue.

19 Presumably Mr. Connolly will testify
20 that IIT will be getting a \$3 million loan from
21 Scattered or Chiplease or a related entity, the
22 implication being that 3 million should be
23 sufficient to cure all the defaults and provide
24 future funding on the landfills that IIT seeks to
25 operate.

1 However, the evidence will show that
2 various problems with this, including the contingent
3 nature of the funds, the fact that the same people
4 who ran RTC will be running IIT, and that the loan,
5 documented though it may be, will be coming from the
6 same people as well.

7 IIT has no operating history
8 whatsoever. If the curtain is back, if the legal
9 operating entity is disregarded and the real persons
10 involved in the operations are revealed, these are
11 the same exact persons who drove RTC into bankruptcy
12 and caused noncompliance and substandard conditions
13 at the Peoria landfill.

14 If the entity of IIT is closely
15 scrutinized, it's obvious that little, if anything,
16 has changed from the debtor's previous and
17 continuing operations. They even work in the same
18 offices.

19 While IIT plans to use outside
20 consultants to work at the landfill, management has
21 not changed. It will be questionable as to what, if
22 anything, will change between the debtor running the
23 landfills, racking up violations and environmental
24 hazards, and what IIT proposes in the future. The
25 credibility and the past practices of these people

1 should be a factor in determining whether these
2 contracts can be assumed and assigned.

3 Peoria will provide the testimony of
4 its engineer to show the status of the landfill and
5 the history of problems caused by the debtor, as
6 well as the projected cost to cure the problems in
7 the future.

8 Although the parties stipulated as
9 to what the monetary and nonmonetary cure items were
10 going to be, the parties do not agree as to what it
11 will cost to implement such a cure. Peoria's
12 estimates to cure the nonmonetary defaults for added
13 site far outweigh the estimates of IIT, raising the
14 question of whether IIT will have sufficient capital
15 to maintain all of its sites if IIT's estimates turn
16 out to be low or if its funding dries up.

17 Peoria also sought to admit the
18 evidence of a gentleman from the Clean Air Act
19 Permit program at the Illinois Environmental Agency
20 regarding the status of IIT's ability to obtain a
21 permit to operate the gas-to-energy facility. There
22 are several issues regarding the permit, including
23 whether the renewal application was timely
24 submitted, whether the receiver has the ability to
25 execute the application on behalf of RTC, and most

1 importantly being the compliance issues. If the
2 landfill is not compliant, the IEPA will not issue a
3 renewal permit.

4 IIT's ability to provide a permit
5 from the IEPA is questionable at best, calling into
6 question whether IIT can provide adequate assurance
7 of future performance. If IIT cannot show evidence
8 of a valid IEPA permit today, nor the unquestioned
9 ability to get one in the near future, it cannot
10 provide adequate assurance of future performance.

11 Peoria believes that this testimony
12 along with the other evidence provided will show
13 that, given all the tentative and speculative
14 issues, IIT cannot provide adequate assurance of
15 future performance for the Peoria agreements.

16 THE COURT: Okay.

17 MS. KUJACA: Thank you.

18 THE COURT: Thank you.

19 Your first witness, Mr. Jordan.

20 MR. JORDAN: We would call Andrew
21 Jahelka. And we would ask that we excuse witnesses.

22 THE COURT: Yes. Each party is allowed
23 to have one representative remain in the courtroom
24 to consult with counsel. If you do have an expert
25 witness, you may also have your expert witness at

1 counsel table.

2 Anyone else who is expected to give
3 testimony in this proceeding is required to leave
4 the courtroom at this point until you conclude your
5 testimony, the reason for that being that we don't
6 want your testimony to be influenced by what you've
7 heard from the other witnesses who testified. Of
8 course once you finish giving your testimony and
9 you're no longer in a position to have that
10 testimony influenced, you're welcome to stay in the
11 courtroom.

12 (Witness sworn.)

13 MR. JORDAN: Your Honor, we would ask
14 that Mr. Sloan, who is not with -- I don't believe
15 he's with the City and County of Peoria, be
16 excluded.

17 MS. KUJACA: He is my representative from
18 the City and County of Peoria.

19 MR. JORDAN: He doesn't even work for the
20 City and County of Peoria. How could he be a
21 representative of the City and County of Peoria?
22 He's just a witness. He's a --

23 THE COURT: Do you have any relationship
24 to the city?

25 MR. SLOAN: Yes. I'm employed by Foth

1 Infrastructure & Environment, and we have a contract
2 for engineering services for the City of Peoria,
3 city and county.

4 MR. JORDAN: I don't know that makes him
5 a representative of the city.

6 THE COURT: So you're here as an agent of
7 the city today?

8 MS. KUJACA: Yes.

9 MR. SLOAN: And expert witness.

10 MR. JORDAN: I don't think --

11 THE COURT: Have you been identified as
12 an expert witness?

13 MS. KUJACA: He's a fact witness. He is
14 an agent of the City and County of Peoria.

15 MR. JORDAN: Your Honor, he's an
16 independent contractor who works -- or he actually
17 works for a company that's employed by the City and
18 County of Peoria, and we established this at the
19 deposition. In fact, Ms. Kujaca said she didn't
20 represent him at the deposition because he wasn't a
21 representative of the City and County of Peoria at
22 his deposition. I don't know how that changes
23 today.

24 MS. KUJACA: I did not represent him
25 individually, no, I did not. But he is here as an

1 agent of the City and County of Peoria to testify on
2 its behalf regarding the engineering issues.

3 THE COURT: Okay. I'll accept that
4 representation, and he can remain at counsel table.

5 MS. KUJACA: Thank you.

6 THE COURT: Go ahead, Mr. Jordan.

7 MR. JORDAN: Thank you, Your Honor.

8 ANDREW JAHELKA, WITNESS, SWORN

9 DIRECT EXAMINATION

10 BY MR. JORDAN:

11 Q Would you please state your name for the
12 record.

13 A Andrew Jahelka.

14 Q Have you ever heard of Illinois
15 Investment Trust No. 9 --

16 THE COURT: You'd better spell your last
17 name, Mr. Jahelka.

18 MR. JORDAN: I'm sorry.

19 THE WITNESS: J-a-h-e-l-k-a.

20 BY MR. JORDAN:

21 Q Mr. Jahelka, have you ever heard of the
22 Illinois Investment Trust No. 92-7163?

23 A I have.

24 Q All right. How is it that you've heard
25 of it?

1 A The trust was established -- Scattered
2 Corporation was the original grantor under the
3 trust. The trust was established in 1992 originally
4 to engage in dividend reinvestment plans. The trust
5 had a minimal amount of activity in the early '90s,
6 and has essentially sat dormant for the better part
7 of the last 15 years.

8 Q Okay. You mentioned Scattered
9 Corporation. What's your relationship with
10 Scattered Corporation?

11 A I am its president, I'm a director, and
12 I'm also a shareholder.

13 Q Okay. So at the time that the trust was
14 created, were there any other grantors or
15 beneficiaries other than Scattered?

16 A No, Scattered was the only grantor and
17 the only beneficiary.

18 Q Okay. And who served as its first
19 trustee?

20 A Leon Greenblatt.

21 Q Okay. When, if ever, did that change?

22 A The -- somewhere in, I think, the summer
23 of 2006.

24 Q Okay. Would it have been August of 2006?

25 A That sounds about right.

1 Q Okay. And who was -- who became the
2 successor trustee, if you know?

3 A John Connolly.

4 Q And why was Mr. Connolly selected?

5 A The trust was designated to receive
6 certain assets that had previously been owned by RTC
7 and was going to go into the landfill gas business,
8 if you will. And Mr. Connolly, with his experience
9 in that industry, is far more qualified than
10 Mr. Greenblatt to oversee the trust's operations.

11 Q So did Mr. Greenblatt resign then?

12 A I believe so, yes.

13 Q Okay. Now, are there any other
14 beneficiaries in the trust now other than Scattered
15 Corporation?

16 A Yes. Scattered continues to be a
17 beneficiary. Chiplase, Inc., has been additionally
18 named as a beneficiary of the trust.

19 Q Okay. What's the nature of Scattered's
20 business?

21 A Scattered is a holding company. It holds
22 certain real estate investments, oil and gas
23 operations. It also has purchased two loans, the
24 Caterpillar loan that had been made to RTC and the
25 Aquila loan that had been made to RTC.

1 Q Okay. And what would the value of those
2 real estate investments be?

3 A Well, the partnership that owns the Old
4 Colony Building is roughly 85 percent owned by
5 Scattered Corporation, and there is roughly 3 to
6 \$4 million worth of equity in that building.

7 Q So after it paid off debt, Scattered
8 would have a right to 85 percent of 3 to \$4 million;
9 is that right?

10 A That's correct.

11 Q Okay. And that would be net of closing
12 costs?

13 A That would be net of closing costs and
14 the mortgages on the property.

15 Q Okay.

16 A Additionally, the 330 South Wells
17 building, which is owned by --

18 THE COURT: Could I interrupt you just
19 for a second?

20 THE WITNESS: Yes.

21 THE COURT: When you say that there is 3
22 to \$4 million of equity in this Old Colony Building,
23 what are you assuming is the value of the building
24 and how much of a loan is outstanding on that
25 amount?

1 THE WITNESS: There's approximately
2 \$10 million in mortgages on the property, and the
3 partnership has been in negotiations to sell the
4 property for \$13.6 million, although that contract
5 is still pending. It has not been executed as I sit
6 here.

7 THE COURT: Okay.

8 MR. JORDAN: Thank you.

9 BY MR. JORDAN:

10 Q And then you were discussing a different
11 property that Scattered Corporation has an interest
12 in?

13 A Yes. The building is located at 330
14 South Wells in Chicago, and it is owned by 200 West
15 Partners Limited Partnership. Again, Scattered owns
16 approximately 85 percent of that partnership. That
17 building is -- I think the last appraisal I saw on
18 it was \$5.7 million, that was a few years ago, and
19 it has approximately \$3 million worth of debt on it.

20 Q Okay.

21 A So there's roughly two-and-a-half to
22 \$3 million of equity. I think that's a fairly
23 conservative estimate.

24 Q Okay. What's Scattered's percentage of
25 ownership?

1 THE COURT: 85, he's already testified.

2 MR. JORDAN: Oh, I'm sorry. I missed
3 that.

4 BY MR. JORDAN:

5 Q And the oil and gas investments that you
6 mentioned, what is the free cash flow that would
7 go -- could go to Scattered for that?

8 A The entity that operates the oil and gas
9 wells is a company called H&M Oil & Gas, LLC. The
10 operations are in Texas. The last financials for
11 that entity that I saw were for the three months
12 ended in December of '07. And in December, the
13 entity had earnings before interest, depreciation,
14 and amortization of approximately \$1.2 million, and
15 has about \$500,000 a month of debt service, leaving
16 it with free cash flow of approximately \$700,000 a
17 month.

18 Q And that would be earned -- that would
19 not include taxes because taxes have already been
20 taken out of that?

21 A Taxes are already paid on that income,
22 yes. That's earnings before interest, depreciation,
23 and amortization.

24 Q Okay. And what, if any, ability does
25 Scattered have to capture that \$700,000 and utilize

1 it?

2 A Scattered -- at the present time
3 Scattered owns all of the ordinary membership
4 interests in the LLC, and Scattered also owns all of
5 the preferred interests in the LLC, and this is H&M
6 Oil & Gas, LLC. So Scattered can exert whatever
7 financial control it would like over those -- that
8 cash flow. Until now, Scattered has allowed H&M to
9 use that cash flow to continue to complete oil and
10 gas wells, which it has been doing. Scattered has
11 the ability to marshal all of that cash flow, should
12 it wish, in order to fund its loan commitment to
13 IIT.

14 Q Okay. And, similarly, if the property
15 that you refer to is being in negotiation and sold,
16 would Scattered have the ability to utilize those
17 funds to fund?

18 A Yes. Scattered would receive its
19 85 percent share of the proceeds on the sale of that
20 building if that sale is consummated.

21 Q Okay. Have you ever heard of the
22 landfills in Bloomington, Litchfield, Springfield,
23 and Peoria, Illinois?

24 A I've heard of them, yes.

25 Q Okay. What, if any, is the extent of

1 Scattered's familiarity with those landfills?

2 A Essentially what it has learned through
3 Mr. Connolly.

4 Q Excuse me.

5 Is Scattered a party to any
6 contract, the subject matter of which involves in
7 any way those landfills or gas plants at those
8 landfills?

9 A Only the funding commitment that it has
10 on the loan and security agreement to IIT.

11 Q And --

12 A Well, it also owns the Caterpillar loan
13 and the Aquila loan.

14 Q Okay. Does Scattered have any
15 liabilities associated with any of these investments
16 that you haven't mentioned before?

17 A Scattered has no other long-term
18 liabilities on its books. You know, the partnership
19 has real estate loans associated with the buildings,
20 and H&M Oil & Gas has the line of credit that it
21 used for its operations. But those are obligations
22 of those entities, not Scattered.

23 Q Okay. Now, if we could look at
24 Exhibit 50 and 52.

25 MR. JORDAN: Your Honor, I'm kind of new

1 at this. Do we need to look at them one at a time
2 or can we have them pulled up?

3 THE COURT: Okay. Now...

4 MR. JORDAN: I believe they were in
5 evidence.

6 THE COURT: Yeah, all of the exhibits are
7 in evidence.

8 MR. JORDAN: I think, actually, Allied
9 has objected to certain exhibits we have.

10 THE COURT: It's not coming over again.
11 We didn't test this before. We should have. All
12 right. It doesn't even show judge's computer as one
13 of the possible...

14 Ah, I see the problem.

15 MR. JORDAN: Your Honor --

16 THE COURT: This is going to be fine. I
17 just have to apologize to you. This is a new
18 system, and we should have tested it before, but I
19 think I see what the difficulty was. This will take
20 just a second.

21 MR. JORDAN: Do I need to press anything
22 or --

23 THE COURT: No, you don't need to do a
24 thing.

25 MR. JORDAN: Okay. I screwed things up

1 at the Hotel 71 trial when I pushed something, so I
2 don't want to do it again.

3 THE COURT: All right. This is
4 Exhibit 50 that you were interested in?

5 MR. JORDAN: It's 50 and 52, which is the
6 amended note and the amended loan and security
7 agreement.

8 THE COURT: Okay. Here is Exhibit 50.
9 Now, if you want me to show both of these side by
10 side, I can do that. But it's easier to see if you
11 limit it to one at a time.

12 MR. JORDAN: Let's just limit it to this.

13 THE COURT: Okay. Now, 50 and 52, did
14 you say?

15 MR. JORDAN: 52 is the amended loan and
16 security agreement.

17 THE COURT: Which do you want to look at
18 first?

19 MR. JORDAN: I think we can just look at
20 the note. I'm not sure we need the security
21 agreement.

22 THE COURT: Okay. I have it if you want
23 it.

24 MR. JORDAN: Okay.

25 THE COURT: But here's the note.

1 BY MR. JORDAN:

2 Q Do you see the amended note in front of
3 you?

4 A I do.

5 Q Okay. Now, what, if any, obligations
6 does Scattered Corporation have under the amended
7 promissory note?

8 A Well, Scattered -- I'm not sure I
9 understand your question. Under the note, IIT has
10 the obligation to pay back Scattered \$3 million.
11 Scattered under the loan agreement has the
12 obligation to lend \$3 million.

13 Q Well, is this intended to be a term note
14 or a line of credit?

15 A It's a revolving line of credit.

16 THE COURT: Well, I guess the question is
17 has Scattered made any payments to IIT under this
18 note?

19 THE WITNESS: Not yet.

20 BY MR. JORDAN:

21 Q When do you think that it's likely the
22 first advance under the note would be?

23 A I suspect it will be very shortly after
24 these contracts are assumed and assigned to IIT, and
25 IIT needs to make the cure payments on each of

1 Peoria and Springfield.

2 Q Okay. And does Scattered have the money
3 set aside right now to fund those cure payments?

4 A Not as I sit here right now, but it
5 will -- we were talking about roughly a
6 million-two-fifty that will need to be paid in
7 fairly short order, and Scattered will have that
8 within 60 days.

9 Q Okay. And that's the time frame within
10 which you understand that the trust would have to
11 make the payments?

12 A My understanding is that that's quick
13 enough for the trust to make its payments, yes.

14 Q Okay. And what, if any, is the nature of
15 the business relationship between Scattered and
16 Chiplease other than this loan?

17 A There is none.

18 Q Okay. How is it that it came about that
19 Chiplease became an additional beneficiary on the
20 Illinois Investment Trust?

21 A There was a discussion between me,
22 Mr. Greenblatt, and Mr. Nickels, who is the -- the
23 three of us constitute the entire board of Scattered
24 Corporation. Mr. Greenblatt represented the
25 interest of Chiplease. Chiplease was the owner of

1 certain contracts and equipment that had previously
2 been owned by RTC and was going to contribute those
3 to the trust, and we agreed that Chiplease would be
4 named as an additional beneficiary of the trust at
5 that time.

6 Q Okay. And as a part of agreeing to enter
7 into the amended promissory note and the loan and
8 security agreement, amended loan and security
9 agreement, what, if any, financial information did
10 Scattered review regarding these sites?

11 A John Connolly prepared pro forma
12 projections for IIT which were his estimates of
13 the -- each of the four sites and how he expected
14 those sites would perform based on certain
15 assumptions that he was making. I reviewed those
16 with Mr. Connolly, and we discussed what -- in round
17 numbers when certain sites would be coming online,
18 how much would be required to complete those sites,
19 and laid out a schedule of when advances would be
20 needed to be made. And it was arrived at that
21 \$3 million would be enough to fund the four sites
22 that IIT wished to develop.

23 Q Okay. So are you or are you not
24 satisfied that the pro formas are reasonable?

25 A They seemed reasonable. And Mr. Connolly

1 explained to me where the revenue numbers came from,
2 the estimates, where the expense numbers came from.
3 And based on his experience, I believe the numbers
4 to be reasonable.

5 Q Okay. Of the \$3 million under the --
6 your agreement to fund a line of credit, what
7 portion is going to be made available by Scattered
8 and what portion is being made available by
9 Chiplase?

10 A There's no agreement in place right now
11 as to how much each of those entities is going to
12 extend under the note and security agreement.
13 However, Scattered Corporation is prepared to loan
14 the entire \$3 million.

15 Q Okay. And is there any question in your
16 mind that Scattered has the ability to fund up to
17 \$3 million?

18 A There's no question in my mind that
19 Scattered has the ability to fund \$3 million.

20 Q Okay. Did Scattered have any involvement
21 in the operations of Resource Technology Corporation
22 pre-petition?

23 A Scattered did not, no.

24 Q Other than as a lender, did Scattered
25 have any involvement in the operations of RTC

1 post-petition?

2 A No, it did not.

3 Q Okay. Does Scattered have an
4 understanding of what individuals or entities would
5 actually operate the gas plants at these sites in
6 the event the contracts are assigned to the trust?

7 A Only the understanding that Mr. Connolly
8 will be responsible for the individuals or entities
9 that IIT retains to operate those sites.

10 Q Have you discussed or directed Mr.
11 Connolly regarding hiring or retaining personnel?

12 A No. As trustee, Mr. Connolly has that
13 discretion.

14 Q Okay. Now, there's \$3 million available.
15 In the event that that amount proved to be
16 inadequate, and presuming that the properties met
17 the pro formas, what, if any, interest would
18 Scattered have to fund more than \$3 million?

19 A If IIT is meeting the pro forma
20 projections, the only way that \$3 million would be
21 inadequate for it to fund all those projects would
22 be because the projects are coming online more
23 quickly than IIT estimates that they'll be able to
24 come online. In that case, Scattered would be very
25 willing to extend additional credit in order to

1 complete the projects faster. If IIT is not meeting
2 its pro formas and the \$3 million is inadequate,
3 it's not likely Scattered would be willing to extend
4 any additional credit.

5 Q Okay. On a going-forward basis, what, if
6 any, involvement is Scattered going to have in the
7 operation of any of these sites?

8 A Only pursuing its rights under the loan
9 and security agreement.

10 Q Do you plan on having any -- directing
11 Mr. Connolly what to do or not to do regarding the
12 operations?

13 A No, not at all.

14 MR. JORDAN: Thank you. We'll pass the
15 witness, Your Honor.

16 THE COURT: Okay.

17 Mr. Bohan?

18 CROSS-EXAMINATION

19 BY MS. BOHAN:

20 Q Scattered Corporation has no balance
21 sheet, does it, sir?

22 A Scattered does not prepare financial
23 statements on a regular basis like a typical
24 operating entity might, yes.

25 Q So Scattered doesn't prepare a balance

1 sheet, correct?

2 A Not regularly.

3 Q Or an income statement, right?

4 A That's correct.

5 Q Or a statement of sources and uses of
6 cash, correct?

7 A It has from time to time, but it does not
8 do it in its ordinary course of business, no.

9 Q Scattered has two principal assets,
10 correct?

11 A I would not agree with that, no.

12 Q Okay. Well, did you not tell me at your
13 deposition, sir, that Scattered had two principal
14 holdings? It's a holding company with two principal
15 investment holdings?

16 A I believe what I testified to at my
17 deposition was that Scattered owned partnership
18 interest in two pieces of real estate, that it owned
19 its interest in H&M Oil & Gas, and that it owned the
20 two notes that were loans to RTC from Caterpillar
21 and from Aquila.

22 Q Okay. Well, then let's break it down.
23 Scattered is an indirect owner in the real estate
24 located at 330 South Wells, correct?

25 A That's correct.

1 Q Scattered is an indirect owner in another
2 piece of commercial real estate in Chicago, correct?

3 A That's correct.

4 Q Now, with respect to the 330 South Wells
5 building, what is your estimate of the equity in
6 that property?

7 A I believe what I had just testified to
8 was that the building last appraised at
9 \$5.7 million, and that it has about \$3 million worth
10 of debt on it.

11 Q And when was that building last
12 appraised, sir?

13 A I'd have to go back and look. I believe
14 it was around 2000.

15 Q Now, with respect to the other commercial
16 real estate in Chicago, what's the address of that
17 building, Mr. Jahelka?

18 A 407 South Dearborn.

19 Q And if I understood your testimony
20 correctly, the debt -- Scattered is an indirect
21 owner of approximately 85 percent of the equity in
22 that property, correct?

23 A That's correct.

24 Q And you estimate that the property is
25 worth \$13.6 million?

1 A That's the price that we've been
2 negotiating to try and sell it at.

3 Q With the debt at about \$10 million --

4 A That's correct.

5 Q -- right?

6 Now, the property has been up for
7 sale for quite some time, has it not?

8 A It has, yes.

9 Q When was it first offered for sale?

10 A Maybe two years ago.

11 Q All right. And, in fact, at that time
12 the property was actually the subject of an executed
13 real estate purchase and sale contract, true?

14 A That is correct, yes.

15 Q Which fell through, right?

16 A That's correct.

17 Q And as you sit here testifying today,
18 there is no contract for the purchase or sale of
19 that building, is there?

20 A Well, there is that contract which both
21 sides are trying to enforce in an ongoing
22 litigation. However, there is no subsequent
23 contract that has been executed.

24 Q So Scattered is involved in litigation
25 with the prospective purchaser of the building with

1 whom it had a contract?

2 A I believe it's the partnership that is
3 engaged in that litigation --

4 Q I'm sorry.

5 A -- yes.

6 Q Right.

7 The entity of which Scattered is an
8 85-percent owner, that entity which owns the
9 building is engaged in litigation with the party
10 that signed the purchase sale contract?

11 A That's correct.

12 Q All right. And how long has that case
13 been going on for?

14 A It was filed shortly after the closing
15 failed to take place.

16 Q Do either of those two properties on a
17 regular basis generate cash for Scattered?

18 A Not a significant quantity of cash, no.

19 Q Does Scattered receive periodically
20 distributions from the entities of which it is an
21 85-percent owner of either of those buildings?

22 A It has. I don't recall when it last
23 received one.

24 Q The other major asset in Scattered's
25 holdings is an indirect ownership interest in a

1 company that owns and operates oil and natural gas
2 properties in Texas; is that true?

3 A Not exactly.

4 Q Okay. Correct me then so I get it right.

5 A Scattered directly owns the preferred
6 membership interest in H&M Oil & Gas. Scattered,
7 through a wholly-owned subsidiary, owns the ordinary
8 interest in H&M Oil & Gas.

9 Q And has Scattered's preferred interest in
10 that -- is it a partnership or an LLC?

11 A It's an LLC.

12 Q Has Scattered's preferred interest in
13 that LLC been appraised?

14 A No.

15 Q And that LLC does not on a regular basis
16 spin off free cash to Scattered?

17 A It has. I mean, as recently -- I think
18 the last time was either October or November.

19 Q Well, let me just ask you the question
20 flat out. Today as you're sitting here, what are
21 Scattered's liquid assets? What's the value of the
22 cash, marketable securities, and other liquid assets
23 that are currently owned by Scattered?

24 A The only assets that Scattered has are
25 the ones that I've identified. If you want to call

1 those liquid or not, I'm not exactly sure. I don't
2 mean to be argumentative.

3 Q Well, would you agree with me to kind of
4 torture the use of -- it would torture the meaning
5 of the word "liquid" to call an indirect ownership
6 interest in a Texas oil and gas operation a liquid
7 asset, right?

8 A Yeah, I don't want to characterize --

9 Q All right.

10 A I think I could sell it very quickly at a
11 very nice profit, and I don't have an interest in
12 doing that. My --

13 Q Well, let's talk about the profitability
14 of that business venture. I think you said that as
15 of the end of 2007, it was showing earnings before
16 income, taxes, depreciation, and amortization of
17 about \$1.2 million?

18 A I believe what I testified to was that
19 its earnings before interest, depreciation, and
20 amortization. This is after tax --

21 Q Okay.

22 THE COURT: It was EBIDA, without the T.

23 MS. BOHAN: Without the T.

24 THE WITNESS: Yes, EBIDA.

25 BY MS. BOHAN:

1 Q But the free cash then was what?

2 A Was approximately \$700,000.

3 Q And the profitability of that business
4 depends, in part, on the price of oil and natural
5 gas, does it not?

6 A Yes.

7 Q All right. In fact, the profitability of
8 that venture depends in significant part on the
9 price of crude oil and natural gas, right?

10 A One hundred percent of its revenues are
11 derived from the sale of oil and natural gas.

12 Q And the figures you gave us were for the
13 end of 2007, correct?

14 A The numbers I referred to were for
15 December of 2007, yes.

16 Q At a time when the price of oil was at
17 historic highs, right?

18 A I don't know what the average price was
19 for the month of December, but oil has hit historic
20 highs in recent months, yes.

21 Q So when you were asked by Mr. Jordan
22 whether Scattered has funded any portion of this
23 loan to IIT, you answered no, right?

24 A That's correct.

25 Q All right. And today Scattered is not in

1 a position to fund any portion of that loan, right?

2 A I think I discussed that Scattered in
3 very short order will be in position to fund the
4 loan.

5 Q If the property that's been up for sale
6 and is now the subject of litigation, if that is
7 sold, right?

8 THE COURT: I don't think you need to go
9 through each of the possibilities for their raising
10 cash.

11 MS. BOHAN: All right.

12 BY MS. BOHAN:

13 Q Now, you testified that other than as
14 co-lenders to IIT, Scattered had no relationship to
15 Chiplease, has no relationship to Chiplease, right?

16 A That's correct.

17 Q Okay. You are the president of
18 Scattered?

19 A That's correct.

20 Q You are a director of Scattered?

21 A That's correct.

22 Q And you are a shareholder of Scattered?

23 A That's correct.

24 Q The 50-percent shareholder of Scattered,
25 the 50-percent owner of that company is Leon

1 Greenblatt?

2 A That's correct.

3 Q Leon Greenblatt also owns Chiplase,
4 correct?

5 A Either directly or indirectly, yes.

6 Q And he's the president of that company?

7 A I believe so, yes.

8 Q And he sits on its board of directors?

9 A I presume so.

10 Q And he sits on the board of directors of
11 Scattered?

12 A Yes, he does.

13 Q Do you sit on the board of directors of
14 Chiplase?

15 A I do not.

16 Q Okay. And Mr. Greenblatt is also the
17 secretary of Scattered?

18 A That's correct.

19 Q All right. So he's an officer and
20 director and owner of Chiplase, he's an officer and
21 director and owner of Scattered, right?

22 A Yes.

23 Q Okay. And, in fact, you've been in
24 business with the man since the late 1980s, right?

25 A Yes.

1 Q But the two companies have no
2 relationship?

3 A There's no business relationship. The
4 common ownership interest we've discussed at length.

5 Q All right. Let's talk also about other
6 entities that are under common control with
7 Scattered and Chiplease. You're familiar with a
8 company called Rumpelstiltskin?

9 A I am.

10 Q Rumpelstiltskin is the owner of RTC,
11 correct?

12 A Subject to the bankruptcy estate --
13 Rumpelstiltskin owned 100 percent of the stock of
14 RTC, yes.

15 Q All right. And you're a director of
16 Rumpelstiltskin?

17 A I am, yes.

18 Q And so is Mr. Greenblatt?

19 A Yes.

20 Q Who owns Rumpelstiltskin?

21 A I do along with Mr. Greenblatt and Mr.
22 Nickels.

23 Q Now, incidentally, regarding the no
24 pre-existing business relationship between Chiplease
25 and Scattered, let me see if I can't jog your memory

1 a little bit about that. In March of 2006, Judge
2 Wedoff approved a settlement agreement between, on
3 the one hand, the trustee, the Chapter 7 trustee of
4 RTC and, on the other hand, a number of entities
5 including Scattered, Chiplase, Banco PanAmericano,
6 and Mr. Greenblatt. Do you recall that?

7 A Honestly not as I sit here.

8 Q Well, it was by virtue of that settlement
9 agreement and the accompanying designation rights
10 agreement that Scattered and Chiplase acquired from
11 the trustee the right to designate which contracts
12 the trustee -- which executory contracts the trustee
13 should assume and assign from RTC's estate, correct?

14 A That sounds correct, yes.

15 Q All right. So in terms of being a party
16 that could designate which executory contracts for
17 assumption and assignment, Chiplase and Scattered
18 both acquired that right together with Mr.
19 Greenblatt by virtue of the settlement agreement,
20 did they not?

21 A I believe that's correct, yes.

22 Q Now, Scattered and Chiplase have
23 identified IIT, that is the Illinois Investment
24 Trust, as the entity that, if the court grants the
25 motion, will be assigned the three contracts that

1 are at issue involving my client, Allied Waste
2 Industries; is that true?

3 A That's correct, yes.

4 Q All right. So as the president of
5 Scattered, you were a part of that decision, right?

6 A I was, yes.

7 Q All right. Now, who decided that it
8 would be IIT that would take over these contracts?
9 As between Scattered and Chiplase, which of the two
10 of you or both of you made that decision?

11 A Both.

12 Q All right. And who made the decision on
13 behalf of Scattered?

14 A Me, Mr. Greenblatt, and Mr. Nickels.

15 Q And who made the decision on behalf of
16 Chiplase?

17 A Mr. Greenblatt.

18 Q And at the time, IIT was an entity of
19 which Mr. Greenblatt was the trustee, correct?

20 A That's correct.

21 Q And Scattered had been the grantor of
22 that trust, right?

23 A That's correct.

24 Q And was its sole beneficiary?

25 A That's correct.

1 Q Now, IIT had no prior experience in the
2 landfill gas business, did it?

3 A That's correct.

4 Q So on what basis did Chiplease and
5 Scattered identify IIT as the business entity that
6 would be assigned contracts with my client
7 concerning the landfills in Litchfield, Bloomington,
8 and Springfield?

9 A Upon advice of counsel.

10 Q Which counsel was that?

11 A I believe at the time it was Dykema.

12 Q Was it Mr. Jordan?

13 A Yes.

14 Q Okay. Scattered and Chiplease then
15 entered into -- well, at the time -- I'm sorry. Let
16 me back up.

17 At the time, IIT had no operations
18 at all, right?

19 A Correct.

20 Q It had no money to perform any of these
21 contracts, correct?

22 A Correct.

23 Q It certainly had no prior experience in
24 the landfill gas businesses, right?

25 A That's correct.

1 Q Okay. And had no personnel, true?

2 A Also correct, yes.

3 Q All right. Now, following that decision,
4 two things happened with respect to the trust. I
5 want to ask you about each of them. First, Mr.
6 Greenblatt resigned as trustee, correct?

7 A I believe that's correct.

8 Q And Mr. Connolly was installed as the new
9 trustee, right?

10 A That's correct.

11 Q Whose decision was that?

12 A Mr. Greenblatt's, I believe.

13 Q And, in addition, Chiplease became a
14 beneficiary of the trust, right?

15 A That's correct.

16 Q Okay. Whose decision was that?

17 A It was Mr. Greenblatt on behalf of
18 Chiplease, and it was consented to by Scattered, and
19 that was agreed to by the board of Scattered, which
20 is me, Mr. Nickels, and Mr. Greenblatt.

21 Q And under the trust agreement, Scattered
22 and Chiplease as the beneficiaries of the trust have
23 the right to change the trustees anytime they want,
24 right?

25 A I'm not sure as I sit here.

1 Q Well, if it would refresh your
2 recollection to see a copy of the trust agreement,
3 I'll show it to you, Mr. Jahelka. But if you're not
4 sufficiently familiar with the agreement, then I
5 won't. Would it help to see the agreement?

6 A I could read the agreement to you if --

7 Q Well, no. My question is are you
8 sufficiently familiar with it that if I showed it to
9 you right now, you could look through it and confirm
10 what I'm saying, that Chiplase and Scattered have
11 the right to change trustees?

12 A Yes.

13 Q Do you agree with that?

14 A Yeah, I could read through the agreement
15 and answer your question.

16 Q All right. Well, then let me show it to
17 you.

18 A Please do.

19 THE COURT: What exhibit?

20 MS. BOHAN: It's IIT Exhibit 1.

21 THE COURT: IIT Exhibit 1. Okay. Hold
22 on. I'll have it for you in just a second.

23 MS. BOHAN: Do you have it in front of
24 you?

25 THE COURT: Yes. Although, it's pretty

1 small unless I make it bigger than this. It's not a
2 good copy. It's also not in text, it's just a
3 photo.

4 MS. BOHAN: Your Honor, I'm just going to
5 withdraw the question.

6 THE COURT: All right.

7 MS. BOHAN: I'll find the exact
8 provision, and we'll take it up with another
9 witness.

10 THE COURT: That's fine.

11 MS. BOHAN: All right.

12 BY MS. BOHAN:

13 Q All right. Now, when Chiplease and
14 Scattered identified IIT as the proposed assignee of
15 these landfill gas contracts, was that decision
16 memorialized in writing at all?

17 A Yes.

18 Q What was the writing?

19 A The amendments to the trust agreement
20 and --

21 Q Well, did Chiplease and Scattered -- I'm
22 sorry. Let me just ask you about Scattered because
23 you're the president of that company. Has Scattered
24 done anything, signed anything that would prevent it
25 from de-designating the trust and designating

1 instead as the counterparty to these landfill gas
2 contracts some other business entity?

3 MR. JORDAN: Objection. Irrelevant.

4 We're way past the designation stage, Your Honor.
5 The designation had to do with the trustee assuming
6 and assigning to somebody.

7 THE COURT: It's overruled.

8 MR. JORDAN: It's irrelevant.

9 THE WITNESS: I'm sorry. Can you read
10 back the question?

11 THE COURT: Just ask another one.

12 MS. BOHAN: I will.

13 BY MS. BOHAN:

14 Q You and Mr. Greenblatt could today leave
15 this courtroom, call Mr. Connolly, tell him the
16 trust is not the designated party to these
17 contracts, instead we've decided to create XYZ
18 Company and have XYZ Company take them over, right?

19 A I don't know. I would have to ask a
20 lawyer.

21 Q Well, as far as you know, are you aware
22 of any restriction on Scattered? Have you signed
23 any covenants? Have you signed any contracts that
24 would prevent Scattered from doing exactly that?

25 A I'm not aware of any, no.

1 THE COURT: All right. If this is a good
2 place to break, if you're about to start a new
3 topic, we'll resume at 1:00 o'clock.

4 MS. BOHAN: Thank you, Your Honor.

5 (Proceedings recess until 1:00.)

6 THE LAW CLERK: Taking up the court's
7 10:30 trial.

8 THE COURT: Okay. We'll resume with the
9 cross-examination.

10 MR. BOHAN: Thank you.

11 CROSS-EXAMINATION (Resumed.)

12 BY MR. BOHAN:

13 Q Mr. Jahelka, I'd like to begin by
14 referring you to that provision in the trust
15 agreement that I wanted to direct your attention to
16 earlier this morning to see if it jogs your
17 recollection regarding the power of Chiplease and
18 Scattered under the trust to remove Mr. Connolly as
19 trustee. Would you -- do you have it before you,
20 IIT Exhibit 1?

21 THE COURT: What page?

22 MR. BOHAN: Page 13, paragraph 7.3. It's
23 the paragraph called "Removal of Trustee."

24 THE COURT: It's in front of the witness.

25 BY MR. BOHAN:

1 Q Can you read it on the screen?

2 A I can read it.

3 Q All right. Would you read that to
4 yourself and tell me if it refreshes your
5 recollection.

6 A Okay. I've read it.

7 Q Okay. And does it refresh your
8 recollection that as the only two beneficiaries of
9 the trust, Scattered and Chiplease could remove Mr.
10 Connolly as trustee?

11 A Yes, they can.

12 Q All right. Now, before designating
13 Illinois Investment Trust as the proposed assignee
14 of these landfill gas contracts, you knew Mr. -- and
15 naming or appointing Mr. Connolly as trustee of the
16 trust, you knew Mr. Connolly, did you not?

17 A Yes.

18 Q For how long have you known him?

19 A Maybe 10 years.

20 Q In fact, Scattered is located at 330
21 South Wells, right?

22 A Yes.

23 Q And that's the same address as RTC?

24 A Yes.

25 Q Does RTC have its office on the same

1 floor as Scattered?

2 A Yes.

3 Q What about Chiplase? Are they there
4 also?

5 A Mr. Greenblatt maintains an office there.

6 Q And my question is, before designating
7 IIT as the proposed assignee of these contracts, did
8 you or anyone else from Scattered as far as you know
9 investigate how successful RTC had been in
10 performing these contracts pre-petition?

11 A Not to my knowledge.

12 Q Did you or any other representative of
13 Scattered investigate whether RTC in performing the
14 gas contracts at Litchfield, Bloomington, and
15 Sangamon had remained in compliance with applicable
16 environmental regulations?

17 A I did not, no.

18 Q Did you determine whether IIT either had
19 a permit or was qualified to obtain a permit so that
20 it could operate gas-to-energy plants at those
21 locations?

22 A I did not.

23 Q Now, what you did do, you told us on
24 direct examination, was examine some pro forma
25 financial statements, correct?

1 A That's correct.

2 Q All right. And what was -- tell me what
3 it was you reviewed.

4 A There was a series of spreadsheets that
5 Mr. Connolly had put together that for each of the
6 four sites projected out the revenue and expenses
7 over I think it was a ten-year period.

8 Q For what purpose did you review those pro
9 formas?

10 A To determine the likelihood that
11 Scattered would be repaid on its note.

12 Q Okay. Did you regard that information as
13 important in deciding whether or not to commit
14 Scattered to loan money to IIT?

15 A Yes.

16 Q But you yourself, Mr. Jahelka, have no
17 prior experience in the landfill gas business,
18 right?

19 A That's correct.

20 Q Did you as a result then consult some
21 independent source, an independent third party to
22 determine the reasonableness of Mr. Connolly's
23 estimates of likely revenues and expenses?

24 A I did not.

25 Q You relied exclusively on him, right?

1 A That's correct.

2 Q Did you conduct any investigation to
3 determine how accurate Mr. Connolly might have been
4 in the past when it came to estimating revenues and
5 expenses from the operation of a gas plant at a
6 landfill?

7 A I did not.

8 Q In the event IIT is unable to perform
9 these contracts, defaults on its loan, Scattered has
10 no contingency plan or plan B, right, to perform
11 these contracts?

12 A That's correct.

13 Q It's relying exclusively on Mr. Connolly
14 and the others who used to work for RTC, correct?

15 A Relying on Mr. Connolly.

16 MR. BOHAN: I have no other questions,
17 Your Honor.

18 THE COURT: Ms. Kujaca?

19 Mr. Apostolides, if at some point
20 you want to ask questions on behalf of the trustee,
21 let me know. Otherwise, I'm going to assume that
22 you do not.

23 MR. APOSTOLIDES: That's fine, Your
24 Honor. Thank you.

25 CROSS-EXAMINATION

1 BY MS. KUJACA:

2 Q Mr. Jahelka, just a brief couple of
3 questions. Did you testify at a deposition on
4 January 25th of this year?

5 A That sounds about right.

6 Q At that deposition, did you state that --

7 MR. JORDAN: Your Honor, I don't think
8 that you can impeach a witness --

9 THE COURT: She doesn't need to impeach
10 him. He's a representative of a party, and any
11 statement that he made is a party admission.

12 MR. JORDAN: He's not a representative of
13 a party, Your Honor.

14 THE COURT: Well, he is essentially a
15 representative of a party. You've told me that you
16 are standing in the shoes of the trustee for
17 purposes of presenting this case.

18 MR. JORDAN: But Mr. Jahelka isn't.

19 THE COURT: Well, he is a representative,
20 is he not, of IIT?

21 MR. JORDAN: No. He's a representative
22 of Scattered. He's a lender. In fact, he doesn't
23 have anything to do with IIT.

24 THE COURT: All right. You're right. I
25 stand corrected.

1 You would need to lay some
2 foundation before you attempt to impeach by a prior
3 inconsistent statement.

4 BY MS. KUJACA:

5 Q Did you testify earlier that Scattered
6 would fund IIT if its liabilities exceeded
7 \$3 million?

8 A I don't think that's exactly what I had
9 said. I think I was asked whether Scattered would
10 fund any amounts over \$3 million, and I described
11 the scenario in which Scattered would be willing to
12 advance monies over and above the \$3 million. And I
13 also said that if IIT was not performing, that
14 Scattered would not likely be advancing any monies
15 beyond the \$3 million.

16 MS. KUJACA: Okay. Thank you.

17 THE COURT: Redirect, Mr. Jordan?

18 MR. JORDAN: Yes, Your Honor. Just a few
19 questions just to clarify.

20 REDIRECT EXAMINATION

21 BY MR. JORDAN:

22 Q The Peoria stipulation requires a \$60,000
23 payment five days after the effective date, which,
24 assuming it was approved tomorrow, that would be 16
25 days from now. Would Scattered be in a position

1 to advance \$60,000 on the line 16 days from now to
2 pay that very payment?

3 A Yes.

4 Q Okay. I think that we talked about a
5 contract buyer for the 401 property, and there was
6 some litigation when Mr. Bohan was asking you some
7 questions. Do you recall that?

8 A The 407 property.

9 Q Right. Do you know whether the 407
10 buyers are or are not in bankruptcy right now?

11 A My understanding is that they recently
12 filed for bankruptcy.

13 Q Was that a Chapter 7 or a Chapter 11?

14 A I'm not sure as I sit here.

15 Q Chapter 7 being a liquidation and Chapter
16 11 being a reorganization.

17 A I can't as I sit here tell you whether it
18 was a 7 or an 11.

19 Q Okay. Is there a trustee in the case?

20 A I'm not sure.

21 Q Okay. Were you offered any opportunity
22 to buy back the contract rights?

23 A There was an offer to buy them out of the
24 contract rights.

25 Q How much was that offer?

1 A I think it was \$10,000.

2 Q Okay. Who were the buyers who -- check
3 the docket?

4 A Well, it was an entity. The
5 principals --

6 Q No. The entities are the ones that I
7 need because they're in bankruptcy.

8 A I can't remember exactly what it's
9 called. It was something like 407 Company, LLC,
10 or --

11 THE COURT: What was the purchase price
12 under this contract?

13 THE WITNESS: I believe it was
14 13.1 million, if I'm not mistaken.

15 THE COURT: Well, if -- and they didn't
16 perform; is that --

17 THE WITNESS: That's correct. They wrote
18 us the earnest money checks. And when we presented
19 them, they were not honored.

20 BY MR. JORDAN:

21 Q And what price are you negotiating at
22 now?

23 A 13.6 million.

24 Q Okay. Now, I think Mr. Bohan talked to
25 you a little bit about the vagaries of the oil and

1 gas market. Do you recall that?

2 A Yes.

3 Q What, if any, head strategy does -- is
4 used by that oil company that we were talking about?

5 A H&M does a couple different hedging
6 strategies involving options. It does both buys
7 puts and sells calls in order to hedge its oil
8 price.

9 Q So it locks in its return on a long-term
10 basis?

11 A It tries to lock in what it feels it will
12 produce over, you know, the next two or three years.
13 My belief is that it has maybe two-thirds of its
14 projected production hedged at this point in time.

15 Q Okay. Now, in order to fund the
16 \$1.25 million, does Scattered have any plans to
17 accumulate money to do that?

18 A Yes. I think I described the plan to
19 accumulate money from H&M. Scattered has not begun
20 to do that merely because it's awaiting the outcome
21 of this hearing.

22 Q Okay. Now, we talked about Illinois
23 Investment Trust's operating history. Are you
24 relying on Illinois Investment Trust's operating
25 history, or are you relying on John Connolly's

1 ability to manage the business?

2 A I'm relying on John Connolly's abilities.

3 Q Okay. There was some conversation about
4 changing the trustee. Are there any plans to change
5 Mr. Connolly as trustee?

6 A At the present time?

7 Q At any time.

8 A There have been no discussions to which
9 I've been a party concerning replacing Mr. Connolly
10 as trustee.

11 Q Okay. Do you anticipate that John
12 Connolly will serve as trustee for the life of the
13 loan to the trust?

14 A That's my expectation, yes.

15 MR. JORDAN: Thank you, Your Honor.
16 Nothing further.

17 THE COURT: Before you step down, Mr.
18 Jahelka, could you tell me whether there is pending
19 any litigation that could cause a piercing of the
20 corporate veil of any of the entities that you've
21 been discussing today?

22 THE WITNESS: Not of Scattered. The only
23 litigation I think you could even be referring to
24 would be the Wachovia litigation, but that's against
25 Loop Corp., and that's an attempt to pierce the

1 corporate veil of Loop Corp. Scattered was a party
2 to that, but that was only because Wachovia had
3 believed that certain assets were transferred from
4 Loop to Scattered, and that transfer never took
5 place. I don't think there's anything in the
6 Wachovia litigation that would affect Scattered.

7 THE COURT: Okay.

8 MR. BOHAN: May I ask one question based
9 on --

10 THE COURT: Go ahead.

11 MR. BOHAN: -- Your Honor's question?

12 RE-CROSS EXAMINATION

13 BY MR. BOHAN:

14 Q Is it not the case that Scattered remains
15 a defendant in the Wachovia litigation?

16 A That is the case. It is still a
17 defendant in that litigation.

18 Q And what's the amount that Wachovia is
19 seeking to recover from Scattered or Loop Corp.?

20 MR. JORDAN: Objection. Irrelevant as to
21 Loop Corp., only to Scattered. I don't know what
22 difference it makes --

23 THE COURT: Fine.

24 BY MR. BOHAN:

25 Q What are Wachovia's alleged damages in

1 the case?

2 A Against Scattered?

3 Q Against whomever.

4 A Well, I mean --

5 MR. JORDAN: Objection, Your Honor. It
6 only matters what they can get from Scattered. We
7 can inflate the number and it wouldn't have anything
8 to do with Scattered. It would be irrelevant and
9 prejudicial.

10 THE COURT: That's sustained. All that's
11 relevant here would be any claim that could
12 potentially be asserted against Scattered.

13 BY MR. BOHAN:

14 Q What amount is Wachovia seeking to
15 recover from Scattered?

16 A It would be seeking to reverse the
17 transfer from Loop Corp. Again, it's a transfer
18 that never actually took place.

19 Q But what's the value? What's the dollar
20 value?

21 A Of something that never happened?

22 Q What's the amount that Wachovia is
23 seeking to recover from Scattered, sir?

24 A Without expressing a legal opinion, I
25 believe it to be zero.

1 Q That's the amount that the plaintiff has
2 sued Scattered for, zero dollars?

3 A Scattered -- again, Scattered -- the only
4 charge relating to Scattered is to --

5 THE COURT: Okay. Let me see if I can
6 shorten this up. I understand that you believe no
7 transfer was ever made --

8 THE WITNESS: Right.

9 THE COURT: -- to Scattered that could be
10 recovered by Wachovia.

11 THE WITNESS: Right.

12 THE COURT: What does Wachovia allege was
13 transferred to Scattered?

14 THE WITNESS: Wachovia alleged that stock
15 in a company called EZLinks Golf was transferred
16 from Loop Corp. to Scattered.

17 THE COURT: And what's the value they
18 allege that stock to be?

19 THE WITNESS: I believe it's -- I'm
20 trying to remember what they allege was transferred.
21 I think it was the series A preferred stock which --
22 I don't know what the current market value would be
23 on it. Loop Corp. paid roughly \$3 million for it.

24 THE COURT: Okay.

25 MR. BOHAN: Thank you.

1 THE COURT: Anything else?

2 (No response.)

3 THE COURT: You may step down. Thank

4 you.

5 THE WITNESS: Thank you.

6 (Witness excused.)

7 THE COURT: Next witness, Mr. Jordan.

8 MR. JORDAN: I'm going to call Mr.

9 Connolly.

10 (Witness sworn.)

11 JOHN CONNOLLY, WITNESS, SWORN

12 DIRECT EXAMINATION

13 BY MR. JORDAN:

14 Q Would you please state your name and
15 spell your last name for the record.

16 A Sure. It's John Connolly,
17 C-o-n-n-o-l-l-y.

18 Q Mr. Connolly, you're the president of
19 Resource Technology; is that right?

20 A Correct.

21 Q Okay. And you're also trustee of
22 Illinois Investment Trust; is that right?

23 A That's correct.

24 Q Okay. How long have you been trustee of
25 Investment Trust?

1 A Since August '06.

2 Q Okay. Why don't we start by just
3 summarizing your educational background for the
4 court.

5 A Sure. I obtained a Bachelor of Science
6 degree in mechanical engineering from Michigan Tech
7 University, Houghton, Michigan, 1984. I've also
8 attended MBA classes at Georgia State University and
9 Northern Illinois University. I didn't finish that
10 course work, I got halfway through it. And then I
11 obtained an environmental engineering certificate
12 from Purdue University by way of General Motors
13 Corporation.

14 Q Okay. Have you ever taken any courses in
15 finance?

16 A Sure, yeah.

17 Q What courses?

18 A I took Master's levels financial courses
19 at Georgia State University and Northern Illinois
20 University. I took accounting courses at both
21 schools, Master's levels.

22 Q Okay. Can you please summarize your
23 professional experience since college.

24 A From 1984 through 1989, and it really
25 goes back to '83 because I was a co-op student, but

1 I worked for General Motors Corporation, worked in
2 Lansing, Michigan, until I graduated from college.
3 And then I went to work in Doraville, Georgia, for
4 an assembly plant down there, and I was a plant
5 environmental engineer for about five years.

6 And then in 1989 I took a position
7 here in the Chicago area with Chemical Waste
8 Management, Inc., which was at the time a
9 wholly-owned sub of Waste Management, Inc., as a
10 senior environmental engineer. I did that for a
11 couple of years with Chem Waste, and I -- I stayed
12 with Chem Waste, but then I took a site level
13 position at the CID Landfill at 138th Street and
14 Calumet Expressway as the environmental manager for
15 that landfill.

16 And then I moved on within Chem
17 Waste as an environmental facility manager. I
18 picked up a couple of sites. I continued to manage
19 the CID landfill, and then I picked Menomonee Falls'
20 facility for Controlled Waste Division in Wisconsin.

21 I also was an environmental
22 facility manager for Riverdale Laboratory which was
23 responsible for analyzing waste samples for ultimate
24 disposition. And then I picked up responsibility
25 for the Geneva Laboratory in Illinois.

1 And then my final assignment was
2 the remediation and close-out and final sale of the
3 Chicago Incinerator, which was a hazardous waste and
4 PCB incinerator on the South Side of Chicago. We
5 sold that to Clean Harbors.

6 At that time the company dissolved,
7 Chemical Waste Management, Inc., and in 1995 I took
8 a position with Resource Technology Corporation,
9 served in Resource Technology Corporation as an
10 environmental engineer responsible for permitting
11 primarily and compliance activities. Then I picked
12 up construction activities for landfill
13 gas-to-energy plants. I oversaw all those
14 activities as director of the construction and
15 environmental compliance and environmental
16 management. And then I became a vice president in
17 1999, similar duties. And then in 2001 I succeeded
18 Mr. Calvert as president of RTC.

19 Q What did you do after 2001?

20 A Well, I continued in that regard. I
21 oversaw day-to-day operations of the company,
22 continued to oversee operations of the landfill
23 gas-to-energy plants. I was responsible for overall
24 environmental compliance and permitting and
25 construction activities.

1 Q Okay. And on an average basis during
2 your presidency, how many people have you managed
3 for -- employees of RTC?

4 A I'd say on an average eight to ten.

5 Q Okay. Have those people changed over
6 time or have you had a lot of continuity?

7 A Some have changed. But the ones that are
8 -- would be right now have been continuous since the
9 mid to late '90s.

10 Q Who would those fellows be that are with
11 you right now?

12 A Richard Walker. He's been with me since
13 1997. He's a construction manager and an operations
14 manager. And he's got an incredible resume on
15 construction activities, building dams and
16 hydropower projects throughout the world.

17 Mr. Fortelka.

18 Q Is that Rob Fortelka?

19 A Yeah, Mr. Rob Fortelka. He's a degreed
20 civil engineer out of the University of Wisconsin.
21 And I'll say that in all my experience, he's one of
22 the best intuitive engineers I've ever worked with.

23 Q What does he do for the company?

24 A He's an operations manager, and he
25 also --

1 Q What does that mean --

2 A Well, he --

3 Q -- for both those fellows?

4 A Yeah. He supervises and oversees the
5 actual operations of landfill gas-to-energy plants,
6 and then he also functions as a resident engineer.
7 And he'll review designs before they go in.

8 Q Okay.

9 A But, overall, his responsibility is
10 day-to-day operation and maintenance of the fields
11 and the plants.

12 Q Okay. Who else is currently on that
13 staff?

14 A We have Mr. William Johnson. He's been
15 with us since 1997. He was construction manager for
16 RTC, built some projects. But now he's more in the
17 business development area.

18 Q So you're actually at least for the trust
19 going out there and looking for new business?

20 A Absolutely.

21 Q And that would be Mr. Johnson?

22 A Mr. Johnson, yeah, exactly, would be
23 doing that now.

24 Q He's going around the country or is he
25 local?

1 A All around the country.

2 Q Okay. Who else is with the company?

3 A We have Michael Watson. He's a well
4 field maintenance technician. He's been with us
5 since either 1999 or 2000, and he reports directly
6 to Mr. Walker.

7 And then Mr. Weeks, Mr. Phil Weeks,
8 who actually predated me with RTC. He was working
9 at RTC in 1993 or '4. And he handles all the
10 environmental compliance duties. He's the lead
11 person to coordinate with consultants such as
12 Trinity Consultants on the periodic compliance
13 monitoring and reporting.

14 Q Okay. You didn't mention how long,
15 because I didn't ask, Mr. Walker and Mr. Fortelka
16 and Mr. Johnson had been with you.

17 A Mr. Walker has been with me since '97, so
18 we're on 11 years. Mr. Fortelka has been with me
19 since 1996, so that's 12 years. And Mr. Johnson
20 since 1997, that's 11 years.

21 Q Okay. Is there anybody else that's on
22 your team?

23 A Nobody that I haven't mentioned.

24 Q Okay. What outside companies are you
25 going to -- well, first off, of these people, which

1 of these people will be providing services related
2 to any of the four landfills about which we're here
3 for today? For instance, I would assume that
4 Mr. Weeks would be involved in the compliance for
5 them.

6 A Well, sure. Yeah, he will be involved in
7 compliance. He'll continue to coordinate with
8 Trinity Consultants. We recently signed a contract
9 with LFR, Inc., which is an international
10 environmental engineering and consulting firm.
11 We're going to expand their role to assist, so he'll
12 coordinate with them.

13 Mr. Fortelka will continue to
14 coordinate with Altorfer, Inc., who does engine
15 maintenance and plant maintenance at Peoria. We're
16 expanding their role, unfortunately, since the death
17 of Mr. Muir.

18 Q What was that? When you refer to the
19 death of Mr. Muir, when did that occur? Well, first
20 off, who is Mr. Muir?

21 A Vince Muir was an employee of RTC since
22 1995. He suffered a stroke in November of last year
23 and then died New Year's Eve.

24 Q Okay. Who's actually on-site at Peoria
25 making sure everything is running smoothly?

1 A Yeah. Vince Muir had that
2 responsibility. Now it is Altorfer. We've expanded
3 their role to be on-site much more frequently, and
4 Mr. Fortelka.

5 Q And, by the way --

6 A Mr. Watson will be a --

7 Q -- does Altorfer have any relationship
8 with Scattered or Chiplease or, you know, ownership
9 or anything else?

10 A No, no. They contracted with IIT.

11 Q Okay. You were going to say something
12 about Mr. Fortelka, I think?

13 A Yeah. Mr. Fortelka will continue to
14 coordinate directly with Altorfer, Inc. He's been
15 doing that for about 10 years now and with that
16 relationship.

17 We have contracts with RS Used Oil.
18 We've had those contracts for about 10 years. And
19 they handle the oil -- not the oil, but the waste
20 condensate and waste disposal coming off the sites
21 for proper pumping and treatment and disposal.

22 We have contracts with Lozier Oil
23 for Peoria that provide the oil and coolants for the
24 sites. We've had that relationship for over 10
25 years.

1 I think I mentioned we've got
2 Altorfer for over 10 years.

3 And then Nelson Oil would assist us
4 in Springfield. That's their territory for oil. In
5 addition to Altorfer, they'd assist us for
6 Springfield as well.

7 Q Okay. I guess just to go over them,
8 there are a series of contracts that are attached as
9 exhibits, and those would be starting at Exhibit 8
10 and going through Exhibit 13. I just want to
11 confirm that -- tell me whether these are documents
12 out of your records.

13 A Okay. I'm not sure how this works here.

14 Q Okay.

15 A So if someone could assist me.

16 THE COURT: I've got Exhibit 8 here. Are
17 these all similar?

18 MR. JORDAN: They're just the various
19 contracts.

20 BY MR. JORDAN:

21 Q I see this isn't signed by RSU. So do
22 you have a contract signed by RS Used Oil?

23 A Oh, yes.

24 Q Just put the wrong document in our
25 exhibit list.

1 A Right.

2 Q But this is your agreement with RS Used
3 Oil?

4 A Yes.

5 Q Okay. And how long do you plan on using
6 RS Used Oil? For the foreseeable future?

7 A I don't have any end date for them. It
8 would be ongoing.

9 Q Okay. And then the next one is the
10 master consulting services agreement between IIT and
11 LFR?

12 MR. JORDAN: And I think we've got to
13 page through that. Maybe we could make it smaller.

14 THE COURT: You want to see a particular
15 page?

16 MR. JORDAN: Kind of -- go back to
17 page 2.

18 BY MR. JORDAN:

19 Q Now, I see at the bottom that the
20 document is signed. Is this a true and correct copy
21 of the document out of your files?

22 A Yes, it is.

23 Q Okay. Is this a contract that IIT is
24 currently a party to?

25 A That's correct.

1 Q And what exactly does LFR plan to do with
2 regard to these various sites that we're here on
3 today?

4 A They can assist us in all regards,
5 environmental permitting, environmental reporting,
6 monitoring. They can assist in stack testing,
7 virtually anything related to, you know, air, land,
8 water permitting compliance. They're a very large
9 firm.

10 Q Now, you indicated they can do that. Are
11 they going to do that?

12 A I plan to use them for stack testing, to
13 assist in stack testing. I do plan to use them on a
14 limited basis for monitoring because Trinity is
15 doing that right now. But I do plan to use them for
16 environmental compliance --

17 Q Um-hmm.

18 A -- work, if you will. But, again,
19 Trinity is doing the lion's share of that now.

20 Q Okay.

21 A But --

22 Q Anything else you're going to use them
23 for?

24 A Not at this time.

25 Q Now, is this a relationship that carries

1 over from RTC or is this a new relationship?

2 A This is new.

3 Q Okay. Do you think this makes your
4 business better than the business that RTC had?

5 A It does. Well -- yes. I mean, not to
6 take anything away from Trinity Consultants. I
7 think they've done a fantastic job. But what LFR
8 brings is a little bit bigger firm, a larger reach,
9 if you will, more resources. And if nothing else,
10 it's a backup. In case Trinity can't perform a
11 certain function, they can come in and do it.

12 Q Okay. Now, if we can switch to, I guess,
13 Exhibit 10. If we could just kind of page through
14 that.

15 A Okay.

16 Q Do you have a signed contract with
17 Trinity?

18 A I do.

19 Q Okay. And I see on the bottom here Gene
20 Taylor.

21 A Right.

22 Q Gene Taylor has since signed this
23 contract?

24 A Right. There's a current contract with
25 them.

1 Q Okay. What is Trinity going to do for
2 you?

3 A Trinity will continue with environmental
4 monitoring at the landfills, which means wellhead
5 monitoring, surface scans. They'll continue with
6 assisting us with permit writing --

7 Q Um-hmm.

8 A -- permit renewals, permit transfers, the
9 monthly reporting, the semiannual reporting, the
10 annual reporting, interpretations of regulations,
11 assisting us with the various agencies. That would
12 be a good summary of their work.

13 Q Okay. And so you anticipate continuing
14 with Trinity for as long as you can?

15 A Absolutely, yes.

16 Q Okay. Why don't we look at Exhibit 11.
17 What is this?

18 A This is an Altorfer Power Systems'
19 general agreement between IIT and Altorfer --

20 Q Um-hmm.

21 A -- dated February 9, 2007.

22 Q Okay. What sites is Altorfer going to
23 provide services for?

24 A Primarily Peoria.

25 Q Okay.

1 A Primarily Peoria would be the case.

2 Q Okay. And that would be the services you
3 referenced previously?

4 A That's correct.

5 Q Okay. And how long do you anticipate
6 using or working with Altorfer?

7 A I don't see any end in sight. We've got
8 a very good relationship with them. Like I say,
9 it's been over 10 years, and we know them really
10 well and they know us really well. And they've done
11 a fine job. And it's their equipment.

12 Q What do you mean?

13 A It's their -- it's Caterpillar equipment
14 and they're a Caterpillar dealer. I think they're
15 the best party to work on it.

16 Q Okay. All right. What work are they
17 doing right now on the engines at the site?

18 A They are doing the monthly preventive
19 maintenance work, which is oil changes, coolant
20 changes, sparkplug gapping, checking for valve wear,
21 checking for head wear, making any valve adjustments
22 that are required. That's the monthly thing that's
23 done. Then they've also been working to bring a
24 second engine online for us. They stripped the
25 heads, they've done all the electrical work, and the

1 next step is to rebuild the manifolds.

2 Q Okay. What do you anticipate is going to
3 be the cost of that service for bringing that second
4 engine online from this point forward?

5 A Well, we spent about 30,000 -- or about
6 25,000, I think, exactly to date. It will be a
7 margin of maybe 25 or 30,000 to bring it online.

8 Q Okay. And then are they going to work on
9 any other engines at the site?

10 A They will. Pursuant to the stipulation,
11 we've got to bring a third engine online.

12 Q At Peoria?

13 A At Peoria.

14 Q Okay.

15 A Right. And so they'll do that work.
16 They'll bring that third engine online as well.

17 Q How is that going to -- how does that
18 work? What do they have to do for that?

19 A Well, once the second engine is done, and
20 I anticipate that will take them another 30 to 45
21 days, we'll just have them roll right into the third
22 engine. It will be very similar. They're going to
23 take off the heads. They're going to examine for
24 wear, replace any parts that have to be replaced,
25 install any new parts that have to be replaced. If

1 they have to bore the cylinders, they'll bore the
2 cylinders. They'll do whatever it takes to bring
3 that engine online.

4 Q Okay. What do you think that's going to
5 cost?

6 A I think around \$50,000.

7 Q Okay. Where are you getting those
8 numbers from? Are these out of your head or from
9 Altorfer?

10 A No. They're from Altorfer, Mr. Fortelka,
11 discussions with both.

12 Q Okay. What other work is Altorfer going
13 to do? Is that it?

14 A No. They'll do -- as I say, we're
15 expanding their role, with the death of Mr. Muir, to
16 be on-site much more frequently to check operations,
17 report on an operational basis to Mr. Fortelka.

18 Q Um-hmm.

19 A Output numbers and status of operation.

20 Q Okay. Now, I understand there was some
21 downtime in January where the engine went down?

22 A Right.

23 Q Is that correct?

24 A Right.

25 Q If you have another engine online, would

1 that ameliorate that situation?

2 A Yes.

3 Q Okay.

4 A There would be continuous combustion of
5 the landfill gas because the second engine would
6 combust the gas.

7 Q And so if you had three engines, it would
8 even further ameliorate the situation?

9 A Right, that's correct.

10 MR. JORDAN: Okay. I think we need to
11 look at the next exhibit, Your Honor, which I
12 believe is 11.

13 BY MR. JORDAN:

14 Q This is an agreement signed by you and
15 someone, it appears, from Lozier Oil. Is this a
16 contract to which you're a party right now?

17 A Yes.

18 Q All right. Or the trust is a party?

19 A The trust is a party to this, yes.

20 Q Now, what exactly are your plans
21 regarding Lozier Oil?

22 A Well, Lozier, again, they've been
23 providing oil to us for over 10 years at that site
24 in Peoria, and they'll continue to provide new oil
25 services. They'll take the waste oil off site,

1 other lubricants we might need for compressors,
2 compressor oil. That's primarily it. From time to
3 time they may provide some coolant services.

4 MR. JORDAN: Now, if we go to 13, Your
5 Honor.

6 BY MR. JORDAN:

7 Q What is this contract? Is this a
8 contract to which the trust is a party?

9 A Yes, it is. This is between Nelson Oil
10 Company and IIT, again, primarily for the
11 Springfield site to provide oil similar to Lozier,
12 provide oil services in and out.

13 Q Okay. And do you anticipate utilizing
14 all of these various companies for each of the
15 sites, Litchfield, Bloomington, Springfield, and
16 Peoria with the exception of maybe Altorfer?

17 A Yeah, with the exception of Altorfer. I
18 would definitely use these guys, the oil guys for
19 Litchfield and Bloomington. But those are gas
20 scrubbing projects. Yeah, with the exception of
21 Altorfer I think is a good characterization.

22 Q Okay. And do you have any knowledge of
23 the general opinion in the industry of these various
24 companies?

25 A Just my experience with them. They're

1 very reputable companies. They've been around a
2 long time providing services. There's no newbies
3 here.

4 Q Okay. Now, as far as the trust, the
5 Illinois Investment Trust, you're the trustee.
6 We've already established that.

7 A Yes, I'm the trustee.

8 Q How long do you plan on being the
9 trustee?

10 A For hopefully a long time.

11 Q Okay. Has there ever been any indication
12 that your appointment might be a short-term
13 appointment?

14 A No. I would expect it to be long-term.
15 I've been working on these projects for 12 years,
16 and I expect they'll go a lot longer.

17 Q Do you anticipate, God willing, that you
18 would be in that role through the life of the
19 contracts?

20 A Yes. 2020, you bet.

21 Q Okay. Now, have you ever heard the term
22 gas collection and control system?

23 A Yes.

24 Q All right. How is it you're aware of
25 that term?

1 A Well, it's a defined term that -- and I'm
2 aware of it through regulatory process, general
3 industry term that's used. I'm just aware of it.

4 Q Okay. Let's break it down. Gas
5 collection system, what's a gas collection system?

6 A Gas collection system, it can be a range
7 of things. But common denominator is usually a well
8 or well systems to extract the gas out of a landfill
9 that has municipal solid waste that's decomposing
10 and produces methane. It can range from wells in
11 vents to wells in solar-powered flares at the top of
12 the wells, to what we call an active gas collection
13 system which hooks up all the wells to common
14 laterals and headers and extraction devices such as
15 a blower or compressor to take the gas out. So
16 that's the range of a gas collection system.

17 Q All right. What's a gas control system?

18 A A gas control system hooks up to whatever
19 gas collection system you have. Again, it can range
20 from solar-powered flares at the top of the wellhead
21 all the way through utility fares, which are the
22 candlestick flares you see from the highway from
23 some of these landfills, to enclosed flares which is
24 just flaring off the gas and the energy there, to
25 running it through engines or turbines to make some

1 process out of it.

2 Q Okay. You've heard the term gas
3 conversion system?

4 A Right.

5 Q What is that? What's a gas conversion
6 system?

7 A Well, that's one that you're taking the
8 energy out of the landfill gas and making some type
9 of energy out it. It can mean direct pipeline
10 injection, pipeline quality standards for natural
11 gas. It can mean making electricity. It can mean,
12 you know, making some type of product out of it, or
13 routing it to a manufacturing facility that uses it
14 in its boilers as supplemental fuel.

15 Q How many years experience do you have
16 with gas collection and control systems and gas
17 conversion systems?

18 A Nineteen.

19 Q Okay. How about the rest of your team in
20 a range?

21 A Everybody has -- the range would be at 11
22 years on the low end to 15 years on the high.
23 Actually, Mr. Fortelka would be in the same range as
24 me, probably 17 years.

25 Q Okay. What, if any, experience do you

1 have with the development of plans and
2 specifications for construction of a gas collection
3 and control system at a landfill?

4 A Well, we've done many over the years, a
5 number of sites ranging from gas collection system
6 designs, everything I've described, all the way up
7 through the control and conversion systems, energy
8 plants with reciprocating engines, energy plants
9 with turbine engines, BTU scrubbing projects,
10 marketing the gas as a medium BTU to local
11 manufacturing facilities. I've got a lot of
12 experience with that on many, many sites.

13 Q Do you have similar experience with gas
14 conversion systems?

15 A Right, yes. That would be the same
16 answer.

17 Q Okay. Now, as I understand the
18 situation, what, if any, obligation as far as the
19 Litchfield, Bloomington, and Sangamon sites does the
20 trust have for building the gas collection and
21 control system?

22 A There's a stipulation that was entered
23 into last year between Allied and the trust, and the
24 obligations by site are -- you know, Springfield, we
25 are obligated to make an election at some point in

1 time to go on the site and buy the gas collection
2 system for a fixed amount, and that's only after
3 Allied is done with the gas collection system.

4 Q Okay.

5 A So that obligation will be to pay
6 \$500,000 for that system. And then we're obligated
7 within 90 days of going on the site to -- wanting to
8 go on the site to build the conversion system to
9 post a performance bond or some security reasonably
10 acceptable to Allied. And I can't recall the exact
11 amount. It might be 1.3 million on that site. So
12 that's Sangamon.

13 Q What about Litchfield?

14 A Litchfield, similar arrangement. We will
15 elect at some point in time and provide a notice of
16 election to Allied to buy the gas collection system
17 for \$400,000. And to be clear, I think there might
18 be a small interest component to that.

19 Q Okay.

20 A But for \$400,000, and then within 90 days
21 wanting to go on-site to build and construct the
22 conversion plant, which will be a high BTU gas
23 injection plant, we have to provide a performance
24 bond reasonably acceptable to Allied.

25 Q Okay. And what about the other site,

1 Bloomington?

2 A Bloomington, again, similar. When
3 they're done with the collection system, which I'm
4 understanding that's six years out --

5 Q Um-hmm.

6 A -- we can make an election after that
7 time to pay \$449,000 for that collection system.

8 Q Plus interest?

9 A Plus interest. And then we have to
10 provide a 90-day election to go on-site and build a
11 conversion project and provide, you know, reasonable
12 security through the stipulation.

13 Q Now, you had indicated time lines.
14 What's your basis for saying, you know -- when do
15 you think the Springfield site is likely to go
16 online?

17 A This is subject to Allied completing the
18 collection system on the site. I drove by there
19 last week and it looked like they were close, but
20 not completely done. But assuming they're going to
21 be done this year -- and I know their expert said
22 they were going to be done last year. But assuming
23 they're done this year, my expectation will be to go
24 on-site sometime this fall --

25 Q Um-hmm.

1 A -- and build -- really just upgrade the
2 existing infrastructure and put a couple engines
3 online.

4 Q Okay. Does the trust have a permit to
5 operate -- first off, do you know what a CAAPP
6 permit is?

7 A Yes.

8 Q What's a CAAPP? What's that stand for?

9 A It's a Clean Air Act Permit Program
10 permit issued by Illinois EPA in this case.

11 Q Okay. Do you understand that the --
12 whether the debtor, RTC, has a CAAPP permit or not?

13 A Yes, RTC does have a CAAPP permit at that
14 site.

15 Q Okay. Assuming it has a CAAPP permit,
16 how would -- what, if anything, would Illinois
17 Investment Trust do to obtain a CAAPP permit?

18 A We would perform an administrative
19 modification to that permit pursuant to the regs,
20 filing a notice of transfer of permit transferring
21 that permit from RTC to Illinois Investment Trust.

22 Q Okay. And have you ever filed for a
23 transfer of permit before?

24 A Yes.

25 MR. JORDAN: Okay. Looking at our

1 exhibits, Your Honor, if we could pull up -- I
2 believe I've lost my place here. It would be
3 Exhibits 27 and 28.

4 BY MR. JORDAN:

5 Q Now, looking through and turning to
6 page 2 of 5...

7 THE COURT: In 28 or 27?

8 MR. JORDAN: In 27. I'm sorry.

9 BY MR. JORDAN:

10 Q And going through there, is this a --
11 what is this?

12 MR. O'MEARA: Your Honor, I'd object on
13 relevance grounds. These are applications for
14 transfers for sites that are unrelated to what's at
15 issue today.

16 THE COURT: Well, the idea is to find out
17 what these permits are like. That objection will be
18 overruled.

19 MR. JORDAN: If we could just kind of --

20 THE COURT: Do you want to see all of the
21 pages?

22 MR. JORDAN: -- roll through it. You
23 just kind of roll through, and then Mr. Connolly as
24 he sees it can --

25 THE WITNESS: Okay. I've seen it.

1 MR. JORDAN: Okay.

2 BY MR. JORDAN:

3 Q And this document, which is, I think, a
4 request relating to the Taylor Ridge facility, who
5 was it filed by?

6 A This is -- it was filed by RTC and
7 Illinois Investment Trust.

8 Q Okay. And so it was submitted to whom?

9 A Illinois EPA.

10 Q Okay. And what's the status of it?

11 A Well, it's currently deemed approved per
12 the regulation. It's deemed approved upon
13 submittal, but it's under review by the agency.

14 Q Is that like a permit shield?

15 A It's definitely a permit shield.

16 Q Okay. And you won't know for some time
17 whether the permit is actually approved or not by
18 the IEPA, correct?

19 A That's correct.

20 Q Okay. But until you hear otherwise, you
21 can operate as IIT at whatever site you would file
22 one of these for, request for ownership change for
23 CAAPP permit, correct?

24 A Correct.

25 MR. JORDAN: Okay. And then Exhibit 28.

1 THE COURT: Are you finish with 27?

2 MR. JORDAN: Yes.

3 BY MR. JORDAN:

4 Q This is a permit for the Ottawa site
5 with -- this assignment document attached is a part
6 of the application?

7 A Yes.

8 Q Okay. It's for both of them?

9 A Right.

10 Q Okay. So this is a document that was
11 filed by whom?

12 A Well, again, it was filed by IIT and RTC
13 because both parties have to sign off.

14 Q Okay. And the party that the ownership
15 change would be in favor of is?

16 A Illinois Investment Trust.

17 Q And the status of this request is?

18 A It's been submitted, it's deemed approved
19 upon submittal per the regulation, and it's under
20 review.

21 Q Okay. And do you anticipate doing the
22 same thing for each of the four sites for which
23 we're here today?

24 A Well, certainly for Springfield and
25 Peoria. To be clear, on Litchfield and Bloomington,

1 those would be new permits.

2 Q Oh, you're right. Okay. So just to --
3 we'll get back to this later. But Litchfield and
4 Bloomington, there are no permits now, correct?

5 A There's none for IIT or RTC, no.

6 Q Are there any needed by IIT or RTC now?

7 A No. It wouldn't be timely. There will
8 be a point in time we'll have to file a construction
9 permit application. Keep in mind the time limits of
10 that is the construction permits once they're issued
11 expire in one year. So you don't want to file --
12 get a permit now for something you're going to build
13 five years from now because it will be expired. So
14 it's a timing issue. But we will file construction
15 permit applications and the appropriate CAAPP
16 applications for those sites.

17 Q Okay. So the trust anticipates filing
18 this type of document for the Sangamon and Peoria
19 sites; is that right?

20 A Correct.

21 Q And let's assume that there is no permit
22 at the Sangamon site. What would you do?

23 A I'd file a construction permit
24 application and follow it up with a CAAPP
25 application.

1 Q And at this time, since you've already
2 testified that Allied is putting in a new gas
3 collection and control system, can you tell me why
4 it is that Allied is putting in a new gas collection
5 and control system?

6 A Sure. It was effectively a condition of
7 Allied buying the landfill back, you know, several
8 years ago from ESG Watts. My understanding, just in
9 review of the documents, the IEPA required Allied to
10 remove the overheight and overgirth situation.

11 Q What's overheight?

12 A Overheight is there's a -- when a
13 landfill is permitted, there's a certain dimension,
14 footprint to the landfill that's allowed, and
15 there's a certain height that's allowed to the
16 landfill. So overheight means you went over what
17 was allowed, you put too much garbage in. And
18 overgirth means you went outside your footprint, if
19 you will. And that's what those two mean.

20 Q So this was something that ESG Watts did,
21 and Allied bought the site and thereby inherited the
22 problem?

23 A That's correct.

24 Q Okay. And so at some point, the system
25 that RTC has had will be removed?

1 A That's correct.

2 Q And if that were to terminate the
3 permits, what would you do?

4 A I would file a construction permit
5 application on behalf of IIT and follow it up with a
6 CAAPP application --

7 Q Okay.

8 A -- on behalf of IIT.

9 Q How many construction permit applications
10 have you been involved with?

11 A Over my career?

12 Q Um-hmm.

13 A Between fifty and a hundred.

14 Q Okay. Did you ever have one denied?

15 A Not -- no.

16 Q Okay. And how long does it generally
17 take to get a construction permit?

18 A Depending on the regulatory structure,
19 it's either 90 days or 180 days. It just really
20 depends on the size of the project and whether it's
21 a major or minor source. But those are the time
22 frames.

23 Q In your experience, what's a likely time
24 frame for a construction permit at Sangamon?

25 A Ninety. Ninety days.

1 Q Okay. And then with regard to -- once
2 this construction permit is filed, can you commence
3 work, or do you have to wait until it's actually
4 issued?

5 A When you file the construction permit
6 itself, you can commence work on the project once
7 it's issued as far as constructing.

8 Q Um-hmm.

9 A But it also allows you to operate usually
10 for at least six months while you debug and stack
11 test.

12 Q Okay. Is that what we refer to as a
13 permit shield?

14 A Loosely defined, yes. But it's more
15 so -- permit shields are more so to allow you to
16 operate under an existing permit while a permit
17 transfer or permit renewal is pending.

18 Q Okay. Now, so you go through this
19 process of constructing, and at some point, assuming
20 you don't have a CAAPP permit, you would file for a
21 CAAPP permit at Sangamon?

22 A Yes. Yeah.

23 Q Okay. Why -- how many CAAPP permits have
24 you applied for?

25 A I think seven --

1 Q Okay.

2 A -- is the number.

3 Q How many have been approved?

4 A All of them.

5 Q Okay. What's generally the time frame
6 that it takes from begin to end?

7 A It's been four years.

8 Q Okay.

9 A Yeah.

10 Q And from the point that you file a permit
11 application until it's approved, you have to wait
12 before you start operating?

13 A Oh, no, no. The construction permit
14 governs that. Once a construction permit is issued,
15 you can build it and operate the system for up to
16 180 days, and then you have to go through the
17 debugging. Then you file for your operating permit
18 all the while -- keep in mind a CAAPP permit is
19 really an umbrella permit. It's a catchall for all
20 the emission sources at a particular site. You can
21 absolutely operate while that CAAPP permit is
22 pending. In fact, we did so on all of our sites
23 while our CAAPP permits were pending.

24 Q How many sites did you operate while a
25 CAAPP permit application was pending?

1 A Seven.

2 Q Okay. And so presumably you could
3 operate for four years, or am I mistaken, from the
4 time you file that application to the end of the
5 time period that it would be approved or rejected?

6 A You could operate as long as the agency
7 needed to review that CAAPP application.

8 Q And that's generally about four years?

9 A That's been my experience, yes.

10 Q Okay. Now, with regard to the -- so the
11 Sangamon site is likely to go online this year.

12 What about the Litchfield site?

13 A The Litchfield site, what we're going to
14 do is in 2009, that's going to be a design and
15 permitting year.

16 Q Um-hmm.

17 A We'll develop the -- we'll probably start
18 developing the permits this year through our
19 consultants, Trinity and LRF. But we'll design
20 through next year and secure our contracts, and then
21 elect to go on and start building very early in
22 2010.

23 Q And why 2010?

24 A Well, the construction permit application
25 process, since it will be a new construction

1 application for that site, it's an NSPS site, will
2 be at least 180 days. It's going to have to be
3 public notice, so that will be within that 180-day
4 time frame. But it could easily -- that's a full
5 six months. And then the design takes a few months
6 to get that all squared away, so...

7 Q When do you anticipate Allied is going to
8 be finished putting the GCCS in?

9 A At Litchfield?

10 Q Yeah.

11 A I don't know the answer to that.

12 Q Do you have any sense of that?

13 A I think they're largely complete, but I
14 think they're adding -- they may be adding some
15 wells, but I'm not sure.

16 Q Okay. That doesn't affect your time
17 line?

18 A No.

19 Q Okay. And is the -- generally the --
20 well, walk me through how, if at all, the permitting
21 process would differ from what we just described in
22 Sangamon other than the 180 days.

23 A Well, it's -- Sangamon is an existing
24 permit.

25 Q Well, let's suppose it's not.

1 A Okay. Then it wouldn't be much
2 different, really.

3 Q Okay.

4 A I mean, it would be a construction permit
5 application. Sangamon would be quicker because the
6 design is effectively done. All the infrastructure
7 is in place.

8 Q And that would be put in there by Allied
9 or by RTC?

10 A No. That design for the plant itself
11 would be RTC, right.

12 Q At which site? I'm sorry.

13 A Springfield.

14 Q Springfield?

15 A Right.

16 Q So Allied is building based upon RTC's
17 plan?

18 A No, no, no, no. What's happening at
19 Springfield, Allied is finishing up their collection
20 system.

21 Q Right.

22 A They're putting a collection system in
23 the newer cell, I believe, too.

24 Q Right.

25 A And, you know, once that's at completion,

1 RTC is then allowed by -- or IIT is allowed by the
2 stipulation to elect to go on and buy that system.
3 That's step one.

4 Q Okay.

5 A Okay.

6 Q And what's step two?

7 A Step two is making the 90-day election to
8 Allied to post a performance bond and build a
9 plant --

10 Q Okay.

11 A -- at Springfield.

12 Q All right. Is it the same process at
13 Litchfield?

14 A Yes.

15 Q Okay. And then Bloomington, what are
16 your plans for Bloomington?

17 A Well, Bloomington, they just recently
18 were approved a vertical and horizontal expansion.

19 Q "They" being?

20 A Allied.

21 Q Okay.

22 A I'm sorry. And the testimony, I believe,
23 of Mr. Bent was it's going to be five or six years
24 before they're done filling that and capping it.

25 It's not a big site. So the collection system would

1 be complete we're anticipating sometime in 2013,
2 maybe 2014.

3 Q Um-hmm.

4 A So my plan is to do all the permitting
5 that we have to do a year ahead of that.

6 Q Um-hmm.

7 A But to hit the ground running in 2013
8 building that site.

9 Q Based upon Allied's time line, is there
10 any way you can start earlier?

11 A No.

12 Q Okay. So Allied is really determining
13 the time line for that site?

14 A Yes.

15 Q Okay. And you had indicated that
16 performance on -- what are your plans according to
17 the performance bond?

18 A Well, we will hire a general contractor.
19 And as I've done with multiple projects over my
20 career, the general contractor will post the
21 performance bond for 110 percent of the amount of
22 the contract.

23 Q And what's the general cost of that?

24 A It's between one and four percent of the
25 face value of the bond.

1 Q Okay. Have you ever had any difficulty
2 obtaining or been involved in a situation where
3 anybody has had difficulty obtaining a performance
4 bond?

5 A I have not.

6 Q Okay. And this would be the performance
7 bond required for each of these sites under the
8 stipulation?

9 A Right.

10 Q Okay. So you don't foresee any problem
11 with that?

12 A No.

13 MR. JORDAN: Okay. Why don't we just --
14 if we could just, Your Honor, have Mr. Connolly take
15 a look at the stipulation and make sure that, you
16 know, we haven't left anything out so that it is
17 taken care of. And in the midst here, I lost my
18 place. Why don't we look at Allied Exhibit 47.

19 BY MR. JORDAN:

20 Q Now, can you tell me where in here --
21 would it be helpful to look at an actual paper copy,
22 Mr. Connolly? Or can you see it fine on there?

23 A I can see it.

24 THE COURT: What do you want him to find,
25 Mr. Jordan?

1 MR. JORDAN: I'm sorry?

2 THE COURT: Is there a particular part
3 you want him to look at?

4 MR. JORDAN: Well, what I want him to
5 look at is with regard to the -- the first thing I
6 want to do is look at page 2, commencement of work
7 by IIT.

8 THE COURT: All right.

9 BY MR. JORDAN:

10 Q What I want you to do, Mr. Connolly, is
11 just walk me through the agreement with Allied, what
12 the trust needs to do to conform to the requirements
13 of the stipulation.

14 A Sure. We have to provide written notice
15 of our intent to Allied, its intent to commence work
16 at least 90 days in advance of the work.

17 Q Okay. And with regard to the Sangamon
18 site?

19 A Right.

20 Q When are you planning on doing that?

21 A I would do that very shortly after a
22 successful assignment of this contract.

23 Q Okay. And then the other ones obviously
24 would be extended because you have extended time
25 lines for --

1 A That's correct, right.

2 Q Okay. And then what happens next?

3 A Well, within 90 days, we have to provide
4 funds of -- with the attachment B which, I think,
5 shows the \$500,000 for the collection system, plus
6 any interest. I think that interest starts on the
7 effective date, which would be the final
8 nonappealable order.

9 Q So for Sangamon, it's half a million
10 dollars?

11 A Yeah, about a half a million dollars we
12 have to provide payment to Allied.

13 Q And you have to post a performance bond
14 for a million-three-seventy-five?

15 A Yeah. I'm not looking at that piece, but
16 that makes sense.

17 Q That's the last --

18 A Yeah, that's fine, that's fine.

19 Q And who were you planning on utilizing as
20 a contractor to post that bond?

21 A For Springfield?

22 Q Right.

23 A We would use Encore Energy, would be my
24 first selection.

25 Q Who are they?

1 A It's a company out of Nevada that builds
2 energy plants.

3 Q Okay. And what kind of experience do
4 they have in building energy plants, if you know?

5 A They built many energy plants throughout
6 the course of their history. They built some for
7 us.

8 Q RTC?

9 A For RTC, some turbine plants, yeah.

10 Q Okay. And how -- what's the likely cost
11 of that?

12 A It's going to be around \$500,000. Again,
13 this is a site where the infrastructure is in place,
14 electrical infrastructure, gas infrastructure is in
15 place. We just have to bring in the combustion
16 engine devices and hook it up to the existing
17 utility, interconnect.

18 Q Okay. What do you base that number on?

19 A We did some cost studies a couple years
20 back through a company, another company to move an
21 engine down to Springfield and then set it up
22 completely. That was around \$300,000.

23 Q So you just adjusted the price --

24 A I adjusted it, right. There's certainly
25 some economy of scale when you put two engines in

1 versus one, but -- so that's about 500,000.

2 Q When you say for two engines then, what's
3 the plan at Springfield for engines?

4 A The plan at Springfield is to bring two
5 Jenbacher 320 engines down from the facility in
6 McCook and install them there. And then ultimately
7 the expert report shows there's enough gas, I
8 believe, beyond 2015 to fire a third engine. So
9 that's the --

10 Q That was --

11 A That's down the road.

12 Q -- Allied's expert?

13 A Allied's expert, right.

14 Q Okay. And so you anticipate being able
15 to operate this plant well into the future?

16 A Yes.

17 Q And the filing of new permits would not
18 be an impediment to acting here; is that correct?

19 A No, no.

20 Q Okay. Now, looking at the stipulation
21 again, what do you have to do after we, you know,
22 gave the notice, after we commenced the work?
23 What's next? Oh, by the way, the source of funds
24 for all of these items is what?

25 A Oh, that's the \$3 million line of credit

1 promissory note loan device that I have from
2 Scattered.

3 Q Okay.

4 A Absolutely.

5 Q Okay. And how much would you have to pay
6 to draw on that in year one?

7 A I'm estimating year one, being this year,
8 about 1.25 million. Again, that's a 500,000 payment
9 to Allied for the collection system, 500,000 to
10 Encore Energy to get the engines moved down and
11 interconnected and running. And then I've also
12 added in 250,000 for Peoria for this year.

13 Q Okay. And we'll get to Peoria --

14 A Right.

15 Q -- in a minute.

16 And then what happens then? The
17 next thing is to -- is to provide the security as
18 you indicated?

19 A Right.

20 Q And then the next is to provide evidence
21 that it's obtained all governmental regulatory
22 permits and approvals required?

23 A Right.

24 Q And that would be the process that you
25 refer to as the applying for these and submitting

1 all of that for the permits and everything else; is
2 that right?

3 A That's correct.

4 Q Okay. And then --

5 THE COURT: I'm getting the impression,
6 Mr. Jordan, that your running through this exhibit
7 is simply repeating what Mr. Connolly has said
8 without the exhibit.

9 MR. JORDAN: That's fine, Your Honor.
10 I'll move on.

11 BY MR. JORDAN:

12 Q All right. With regard to the Peoria
13 site, what are the plans?

14 A Well, upon the effective date of this
15 assumption, a few things have to happen per the
16 stipulation. Within five days, Chiplease has to pay
17 in \$60,000 for the royalties.

18 Q Um-hmm.

19 A Within 90 days of that date, I've got to
20 have a second engine online.

21 Q Um-hmm.

22 A Of course I plan on beating that by a
23 large margin because I'm halfway there already. And
24 then beyond that, I have to bring a third engine
25 online. Then I also have to do work -- as IIT, we

1 have to work cooperatively with Peoria City, County,
2 Mr. Sloan, and their representatives to address well
3 field issues, which include looking at any settled
4 areas of landfill cap around our features and
5 repairing those. I mean, it's pretty specific
6 within a certain diameter around a well or within
7 certain feet off that center line on a header. We
8 have to work with them on their studies on their
9 mounting for leachate and their leachate
10 recirculation area. We have to do some stack
11 testing on the unit itself. We plan to do that. I
12 think that -- without looking at it, I think that
13 summarizes it.

14 Q Okay. Is a performance bond or other
15 security required under the stipulation?

16 A No.

17 Q Okay. Now, as far as you know, what's
18 the status of the permit, the CAAPP permit at
19 Peoria?

20 A The CAAPP permit was renewed. Actually,
21 I should say an application for renewal was filed
22 timely, October 2nd, 2006. And so we're operating
23 under a permit shield until such time that the IEPA
24 finally acts on that. And my understanding, that's
25 going to be a similar time line.

1 Q Okay. And looking at Exhibits
2 69 through 72, I believe, can you tell me what those
3 are?

4 A Okay. All right. 69, page 1, that's the
5 certified mail slip. I'm not looking at the
6 original, but it looks like October 2nd, 2006. It
7 shows that we filed by certified mail that permit
8 application for the CAAPP renewal at Peoria,
9 October 2nd, 2006.

10 THE COURT: Do you want him to go though
11 each one of the exhibits then?

12 MR. JORDAN: Well, it was an issue, and I
13 just want to make sure that...

14 BY MR. JORDAN:

15 Q This one -- the next one indicates the
16 date on it of the certified mailing; is that right?
17 And that's February 12?

18 A Yeah, I saw that pop up. Yeah.

19 MR. JORDAN: Your Honor, do you want to
20 review the original to --

21 THE COURT: No.

22 MR. JORDAN: -- confirm that it's
23 actually October 2nd? Okay.

24 BY MR. JORDAN:

25 Q And when was the permit document due to

1 be filed?

2 A For Peoria it was October 2nd, 2006, and
3 for Springfield it was October 12th, 2007.

4 Q And is it your understanding --

5 A I mean February 12th, 2007. Excuse me.

6 Q Is it your understanding that the filing
7 for these is similar to the filing for your taxes,
8 that if it's sent on the day, that it's deemed filed
9 timely?

10 A Yes.

11 Q What do you base that on?

12 A Twenty-five years experience filing
13 permit applications for several companies, several
14 different environmental agencies, and the fact that
15 the regulation supports it here in Illinois. I
16 think it's 35 IAC 100 point something that states
17 it's deemed submitted based on the postmark date or
18 hand delivery date or facsimile date.

19 Q Okay. Now, Mr. Connolly, with regard to
20 the Peoria site, it's going online now. It would be
21 on the effective date you would have certain
22 obligations and then would operate it; is that
23 correct?

24 A That's correct.

25 Q Okay. And -- now, with regard to the

1 Peoria site and all the other Allied sites, did
2 have -- have you done any calculations to
3 determine whether the...

4 A Yes.

5 Q Okay. And those would be the pro formas
6 that we have as exhibits here?

7 A Yes.

8 Q Okay. Now, how much experience do you
9 have in preparing pro formas?

10 A I've done pro formas throughout my entire
11 career on various projects.

12 Q And how many have you done approximately?

13 A Well over 50.

14 Q Okay.

15 A Maybe over a hundred.

16 Q Okay. And have you taken any classes or
17 other matters that help you -- assist you in your
18 ability to prepare those things?

19 A Well, I know in my engineering course
20 work you had to take engineering economics. They
21 focused a lot on pro formas. And certainly the
22 Master's financing level courses and the Master's
23 accounting level courses at Georgia State and
24 Northern Illinois University assisted in that
25 regard.

1 Q Okay. Now, taking a look at Exhibit 35,
2 if you would.

3 THE COURT: This has to be rotated. Hold
4 on.

5 BY MR. JORDAN:

6 Q Can you see that?

7 A I'm sorry. It's blurred. I see Your
8 Honor is blowing it up.

9 Q Here we go.

10 Now, looking at this, there are
11 some assumptions at the top?

12 A Okay.

13 Q And if you -- are those -- are those
14 assumptions based upon the documents that we have as
15 Exhibits 29, the AmerenCILCO informational sheet,
16 and 30, the NYNEX natural gas quotes?

17 A I believe that's the case, yes. I'm not
18 looking at those, but I think that's right.

19 Q What is the AmerenCILCO -- or CILCO
20 published rates to which you're referring there?

21 A Well, CILCO, their most recent published
22 rates were August of 2007, and I pulled that right
23 off their website. There's a PDF.

24 Q Um-hmm.

25 A So what CILCO shows, those are the rates

1 for summer rates, which are May through September,
2 nonsummer rates, which are the other months, the
3 seven other months. And then there's also peak
4 rates and nonpeak rates. So I did a blended average
5 of all the rates to come up with the 5.2 cents per
6 kilowatt hour.

7 Q Had you used that analysis in preparing
8 the pro formas previously?

9 A Yes.

10 Q And, generally, what's been your
11 experience if -- you know, of the final numbers you
12 get to, what's the variance that you would expect?

13 A On the payment rate from the utility
14 or --

15 Q No. On your final number of your pro
16 formas based upon, you know --

17 A Oh.

18 Q -- this, what -- would you say it's plus
19 or minus, you know, one percent, plus or minus a
20 hundred percent?

21 A I'd say throughout my career I've been
22 fairly accurate. I know when I was a GM I was one
23 of the most accurate engineers there. But I'd say
24 plus or minus ten percent.

25 Q Okay. Now, you have a top line of

1 electronic revenue on here. Now, what -- how would
2 you go about generating electric revenue at the
3 Peoria site?

4 A Right. I'll also note this has -- I
5 think this has been modified for the first year,
6 just to be clear, but --

7 Q Did I pick the wrong pro forma?

8 A Yeah.

9 MR. JORDAN: I'm sorry. Can we get to
10 36, Your Honor?

11 THE WITNESS: Everything is the same
12 except for the first year.

13 MR. JORDAN: We had produced initially 35
14 in discovery, so we included it here. I apologize
15 for that.

16 BY MR. JORDAN:

17 Q This is the same assumptions as the
18 other --

19 A Oh, yeah.

20 Q -- document?

21 A In 2008, I'm assuming six months of
22 operation with one engine and six months with two.

23 Q And 5.2 cents per --

24 A Right.

25 Q -- kilowatt hour?

1 A Right.

2 Q And your estimation of revenues from the
3 Peoria site from 35 to 36 changed. And why was
4 that?

5 A Because when I did the initial one, it
6 was when the trial was earlier. I thought we'd be
7 able to run --

8 Q In December?

9 A Yeah, it was earlier. So I just made --
10 based on the stipulation, I've got 90 days from the
11 effective date, say it's sometime in March, to bring
12 that second engine online. So I thought it was
13 reasonable to assume I'll run two engines six months
14 of the year and two engines -- or one engine six
15 months of the year. That was the change. That's
16 it.

17 Q Okay.

18 A And then the maintenance drops a little
19 bit, too, proportionately because of that factor.
20 Everything else is pretty much static.

21 Q And where did you come up with the
22 various numbers for expenses, the mowing expense, et
23 cetera?

24 A Well, mowing expense is per stipulation.
25 That's something Peoria and IIT agreed to to pay

1 them for mowing around our features. Waste disposal
2 is years of history. It's roughly a thousand
3 dollars a month, inflation adjusted. Utility
4 expense, it's been very constant with AmerenCILCO,
5 around 300 bucks a month. That's for rental of some
6 of their equipment, their fees.

7 Royalty and other expenses per the
8 contract is six percent of revenue, so that's just a
9 direct calculation.

10 Equipment maintenance is based on
11 the history with Altorfer, and then the history with
12 Lozier. So that's Altorfer plus Lozier together.

13 Supplies and sundries, cleaning
14 supplies, housekeeping stuff on the site.

15 Landfill gas collection system,
16 O&M, give or take, you know, 3,000 to \$3500 a month
17 per site to do that. And that's just changing out
18 flex hoses, fixing a cracked well, maybe doing some
19 maintenance on an area with a sag line, things like
20 that.

21 Engineering environmental
22 monitoring, that's pretty static, around \$3,000 a
23 month. That's for Trinity to come out and do the
24 monthly wellhead monitoring and the surface scans.
25 I put more into 2008 because we'd be doing more

1 permitting work, and additionally we're going to be
2 doing a stack test, which is about 8 to \$10,000.

3 Q Okay.

4 A Capital expenditures, those largely lie
5 with the plant itself but can be applied to the
6 collection system as well, but those are usually for
7 the engines and compressors, maybe replacement of a
8 head. Compressors, maybe replacement of a motor.
9 Some of the higher-dollar features that would not be
10 just normal O&M like changing out the sparkplugs or
11 adjusting the valves.

12 Salaries, this is -- that was Vince
13 Muir's salary. We paid him 60,000 a year. You've
14 got to add the payroll tax on that and his health
15 insurance. So it's just in there like that.
16 Obviously --

17 Q Just assume that Altorfer is
18 approximately the same thing?

19 A Right, right. And so with Altorfer's
20 expanded role, that salary number would just roll
21 into equipment maintenance.

22 Q Okay.

23 A Insurance, that's just the prorated
24 amount for general liability, workman's comp, and
25 auto insurance required by the Peoria City, County

1 contract.

2 Q Does the Illinois Investment Trust
3 actually have an insurance policy in its name as
4 insured as opposed to additional insured or
5 co-insured, anything like that?

6 A It does. It definitely does.

7 Q Okay. And that covers all four sites
8 here?

9 A Oh, sure.

10 Q Okay.

11 A Yeah.

12 Q And when did you actually finalize
13 procuring that?

14 A Well, we had spoken about that with
15 Philman & Philipini, who is our insurance agent a
16 while back, and I believe I had that covered. I
17 confirmed that with him after my deposition because
18 that issue came up. And, in fact, they just sent me
19 certificates of insurance I believe yesterday or the
20 day before for IIT to prove that.

21 Q Okay. And then with regard to employee
22 reimbursements and bonds, taxes, permits, what did
23 you base that on?

24 A That's just expenses for, say, Rob
25 Fortelka and myself going down to the site, Mike

1 Watson, Richard Walker assisting. Those are just
2 normal employee expenses. Bonds, taxes, permits are
3 based on the annual permit fee from IEPA.

4 Q Okay. And the \$250,000 that we talked
5 about Peoria cost, is that built into this or is
6 that on top of this?

7 A No. That would be -- that's on top of
8 this.

9 Q Okay.

10 A That's on top.

11 Q So this is just an operating pro forma?

12 A Right.

13 Q Okay. And then going from year to year,
14 2008 through 2018, how do the numbers change?

15 A At Peoria or...

16 Q On this pro forma here.

17 A Okay. Well, the numbers change in that
18 in 2009 we're running two engines full time. And
19 then -- so the revenue number is up based on that to
20 477,000 a year. And, concurrently, the equipment
21 numbers go up because we're operating another engine
22 for six months more than we did in 2008.

23 Q Um-hmm.

24 A Everything else moves up three percent.

25 Q Okay. Now, on a comparison with RTC,

1 there is substantial capital investments that the
2 trust is making that RTC didn't, correct?

3 A That's correct.

4 Q Why was it that RTC didn't make the
5 capital expenditures? As president, I would expect
6 you would know.

7 A Well, yeah. I mean, we definitely had
8 plans to on some the sites to make some pretty
9 significant expenditures.

10 Q Um-hmm. Why didn't you?

11 A In the more recent scenarios, certainly
12 the Chapter 11 trustee, Mr. Szilagyi, and I
13 discussed it, and the money just wasn't there. It
14 wasn't available to do it.

15 Q How about in a Chapter 7?

16 A Well, certainly the money wasn't
17 available then. Mr. Steinberg was very clear on
18 that.

19 Q Okay. And then, you know, after the time
20 that the trustee, Mr. Steinberg, stopped operating
21 it, why was it that there were no capital
22 expenditures other than the -- obviously that's --
23 you know, we're here today at the unknown.

24 A Sure, sure. Well, we've operated the
25 site to the best of our ability.

1 Q Did you have the money to make the
2 capital investments previously?

3 A No.

4 Q Okay. What effect, if any, did the lack
5 of money have on your ability as president of RTC to
6 operate RTC?

7 A Well, you have to look at it kind of site
8 by site. But in general --

9 Q Let's look at it site by site.

10 A Okay.

11 Q Let's start with the sites that aren't
12 here, and then we'll switch back to that.

13 A Okay.

14 Q What effect did it have on McCook?

15 A Well, McCook was really an engine issue.
16 If we needed to bring an additional engine online --

17 Q Um-hmm.

18 A -- and there was a cost to that to do the
19 maintenance on the engine --

20 Q Did you have the money to do that?

21 A No, no.

22 Q Okay. Did you ask for the money?

23 A Yes.

24 Q And who did you ask?

25 A Mr. Szilagyi.

1 Q And what did he say?

2 A Well, he did what he could do. But there
3 was only limited funds, so...

4 Q Okay. Now, I understand that there were
5 some environmental issues at the McCook site. Can
6 you tell me what that was about?

7 A Yeah. They stemmed around -- it wasn't
8 so much the well field itself, but more the plant
9 and the engines. There was a fundamental dispute of
10 whether the site was classified as NSPS or not, and
11 for years we were trying to find out from the
12 landfill owner whether it was. After multiple
13 requests, we got nowhere. We asked the IEPA and
14 the -- it was just a question that was out there,
15 and I know the IEPA was working on that.

16 Q Is this something Mr. Szilagyi directed
17 you to do?

18 A Yeah, sure. So, you know, that's a
19 fundamental issue. And so sometime in the year
20 2002, we decided, look, we'll endeavor to monitor
21 the site like NSPS even though we don't know the
22 status of it, and we continued to do that. But
23 there's some fundamental issues with that. With an
24 NSPS classification, the stack test that I did in
25 1999 did not conform with NSPS performance

1 standards, so that was an issue.

2 Q Okay. Well, why didn't you do the test
3 that conformed with the NSPS standards for --

4 A Well, yeah, there's a combination -- you
5 know, the engine was in kind of a tough shape. I
6 don't think it would have passed. But it's really a
7 money issue.

8 Q Okay.

9 A We would have had to bring the engine up
10 to operating condition to pass that standard, I
11 believe. Although, I'm speculating that it wouldn't
12 have passed it.

13 Q You know, in the general, and I'm not
14 talking, you know, specifically for each item --

15 A Right.

16 Q -- but the big issues, any other big
17 environmental issues at the McCook site?

18 A The IEPA wanted a flowmeter, and our
19 position was that we could use the bypass line as an
20 alternative allowed in the regulations.

21 Q Okay. What's your plan regarding
22 flowmeters at these sites?

23 A Well, that's one thing. We're just going
24 to go ahead and install them.

25 Q And why is that that you changed that

1 position from fighting to installing them?

2 A I think that -- you know, one of the
3 things I want to do is sit down with the IEPA when
4 this is done and move forward in a positive manner.
5 I think that's one thing I can show them. Instead
6 of arguing about this, I'll go ahead and spend the
7 \$15,000 per site to put in flowmeters.

8 Q Did you have the 15,000 per site
9 previously to put in the flowmeters?

10 A No.

11 Q Okay. But do you have the 15,000 per
12 site now?

13 A Sure.

14 Q Where are you getting that money?

15 A It will be off the Scattered loan
16 facility.

17 Q Would you be able to have positive cash
18 flow from the Peoria site to --

19 A Oh, sure. Yeah, yeah, that would help,
20 too.

21 Q In fact, the pro forma that we have here
22 shows positive cash flow, doesn't it?

23 A It does, yeah.

24 MR. JORDAN: Now, Your Honor -- well,
25 before we go back to the pro formas.

1 BY MR. JORDAN:

2 Q What other sites are there environmental
3 problems?

4 A The Pontiac site.

5 Q What were the big ticket environmental
6 problems at the Pontiac site?

7 A I think what triggered that was there was
8 a localized fire or a subsurface oxidation in a
9 leachate extraction well that occurred in the summer
10 of 2004. RTC's position was it was Allied's well,
11 and that, you know, they had a corroded fitting on
12 that well for the compressed air nozzle going down
13 there to operate a pump. And so with that
14 corrosion, it failed. Then you have 110 PSI
15 compressed air racing into that well. At the fire
16 triangle you have heat, oxygen, fuel, up with the
17 fire. So that was our position. Obviously, you
18 know, they disagreed. But the --

19 Q "They" being Allied --

20 A -- result of that situation was to shut
21 down a fairly big area of the field, like five or
22 ten acres, shut off wells. And that was something
23 that required notification of the IEPA, and that
24 resulted, I believe, in NOV there. That was the big
25 issue. There's other things that go beyond that.

1 We had some fractured wells due to settlement.

2 Q Did you ever fix those fractured wells?

3 A No.

4 Q Why not?

5 A Well, I think we fixed one of them, yeah.

6 Q Why didn't you fix the other ones?

7 A We had a plan in place, you know, after
8 that to spend substantial money, and it -- just the
9 money was never available.

10 Q Okay.

11 A Yeah.

12 Q What other big-picture items at the
13 Pontiac plant?

14 A I think that's it. It's really -- you
15 know, the turbine plant ran fine. There was really
16 no issues there. We had the flowmeter issue
17 there --

18 Q Yeah.

19 A -- and the bypass valve, but...

20 Q What about the Congress site? Were there
21 any environmental problems at the Congress site?

22 A You know, the Congress site, we ran -- we
23 ran that without any violations well into 2005. It
24 was probably by far the highest maintenance site,
25 you know, the toughest site to run because it was an

1 open landfill. They were continually moving the
2 locations where they were placing the waste. We
3 would have to take whole sections of our gas
4 collection system out at the direction of the
5 landfill owner to make room for more waste fill. As
6 a result, you have full sections that you're not
7 collecting gas on.

8 But even with all that, I think we
9 did as good a job as anybody could do right up into
10 2005. But what happened then was some of the wells
11 started to get silted in because they were used for
12 leachate extraction. Then we had the compounding
13 problem, though, which is even bigger, that the --
14 we saw a rise of about 40 to 50 feet on leachate
15 levels inside that landfill. It's inside a quarry.
16 And the water levels inside the well, as you
17 measured it, over time went up 40 to 50 feet. So it
18 choked off the ability to so extract gas below the
19 saturated zone in the water. So that was a problem.
20 And so as a result of that, you know, with that high
21 a water level, you almost have to change your design
22 on the collection system in order to extract the
23 gas.

24 Q What would it cost to change the design
25 in a collection system in order to collect the gas?

1 A Well, in my opinion, we could have done
2 it for around \$600,000, put in some shallow wells.

3 Q Did you ever ask for that money?

4 A I did ask that of the Chapter 11 trustee.

5 Q And what did he say?

6 A He said it was not available.

7 Q And, in fact, was it available?

8 A No, I don't think so.

9 Q Okay. Were there any other big-ticket
10 items at the Congress site?

11 A I don't think so, no.

12 Q Okay.

13 A I think that was the kind of a big issue.

14 Q Okay.

15 A I mean, outside of the fact, you know, of
16 what I said, it's just -- it was an open landfill.
17 And until such time they closed and capped it, that
18 problem wouldn't go away.

19 Q How about Taylor Ridge? Were there ever
20 any environmental problems at Taylor Ridge?

21 A There were some. I'd put a more of a
22 limited category, but it really revolved around
23 overheight. About 75 percent of the top area of
24 that landfill was overheight.

25 Q Who is the owner of that?

1 A ESG Watts, Inc.

2 Q They seem to have a problem with
3 overheight; is that right?

4 A He does, yes.

5 Q So and there's an overheight problem.
6 How did that devolve down to an environmental
7 problem for RTC?

8 A Well, they were under, you know, order to
9 remove that overheight. And so that would prevent
10 us from installing any lateral pipes to the wells
11 that are in that affected area because those wells
12 and those pipes would just be ripped out.

13 Q So is that something that you could have
14 spent the money on but you didn't think that you
15 could, you know, get approval from the trustee or
16 the court on that --

17 A Yeah.

18 Q -- or something else?

19 A We could have spent some money out there.
20 It would have been -- it would have just been for
21 interim compliance purposes, and it would have been
22 money not utilized in the future just because that
23 system would have to go out.

24 Q Is that during that period before the
25 trustee or during the trusteeship or both?

1 A I'd say it's during the trusteeship.

2 Q And did the trustee authorize the payment
3 of limited amounts to -- and save it for a limited
4 time to avoid the environmental --

5 A No, no, no.

6 Q Do you blame him?

7 A Not really, no. I mean, it was just a
8 situation.

9 Q Now, if you were running the site as IIT
10 with the budget you have, what would you do in that
11 situation?

12 A Well, you know, I've got money now.

13 Q Yeah.

14 A I've got money, I've got capital reserves
15 to spend, and so I could do that. You know, that
16 type of hypothetical scenario, I can draw on that
17 type of money.

18 Q Same thing for Congress?

19 A Right, right.

20 Q Same thing for McCook?

21 A Right.

22 Q Okay. What other sites, if any, were
23 there environmental violation notices or any NOV's or
24 anything else? Peoria?

25 A Beecher.

1 Q Beecher?

2 A Right.

3 Q What about Beecher? What happened at
4 Beecher in a big-picture way?

5 A Well, big picture, we installed a
6 landfill gas collection system out there and then
7 installed a gas turbine plant --

8 Q Um-hmm.

9 A -- in 2002. And it went fairly well
10 initially, but two things. One, I think the turbine
11 was a bit oversized for what actually the gas that
12 was there. Granted it matched up with the models
13 done by all of the independent engineers, so that
14 wasn't an issue. But when you actually get out
15 there and pull on it, it wasn't enough fuel
16 sufficient to run that turbine. However -- and then
17 you had a similar issue. You had kind of literally
18 lakes on top of that landfill. Water was
19 infiltrating into the garbage, rising leachate
20 levels over the years and squelching off the
21 landfill gas production.

22 Q What could you have done to ameliorate
23 the problem?

24 A Well, you would have to change the design
25 somewhat to put in some shallow wells and put your

1 perforations closer to the surface so you can get
2 some gas out as opposed to having them down in the
3 saturated zone. That would cost some money to do
4 so.

5 Q Did you, in fact, do that?

6 A No, no.

7 Q Why not?

8 A Well, the trustee, Mr. Szilagyi, in, I
9 think it was August of 2004, he structured, I guess,
10 a settlement with Waste Management and John Sexton
11 Contractors to sell the gas rights and the site back
12 for 250,000.

13 Q And thereby not having to spend the money
14 to --

15 A Right.

16 Q Okay. What other sites that you can
17 recall had compliance issues?

18 A Outside of the scope of the four here,
19 I'm not recalling any.

20 Q All right. For the four here, have there
21 been any compliance issues relating to Litchfield?

22 A No.

23 Q Okay. Have there been any compliance
24 issues related to Bloomington?

25 A No.

1 Q Okay. Before we get to the other two,
2 some of the other sites which you've operated, you
3 operated at Fort Dodge; is that right?

4 A Correct.

5 Q Have there been any compliance issues at
6 Fort Dodge, Iowa?

7 A No.

8 Q Okay. Greater New Orleans, GNO, did RTC
9 operate there?

10 A Right.

11 Q Okay. IIT operates there now?

12 A Right.

13 Q And, in fact, IIT operates at Fort Dodge
14 now, right?

15 A That's right.

16 Q Did either RTC or IIT have any compliance
17 issues or violation notice related to GNO?

18 A No.

19 Q Did IIT have any related -- has it ever
20 related to Fort Dodge?

21 A No.

22 Q Okay. Now, the Lansing site is a site
23 which RTC operated in -- I'm not sure. IIT operate
24 there now?

25 A Right.

1 Q All right. RTC ever have any compliance
2 issues at the Lansing site?

3 A No.

4 Q How about IIT?

5 A No.

6 Q Okay. The Kewanee site, RTC and the
7 trust have both operated at the Kewanee site; is
8 that correct?

9 A That's right.

10 Q Did RTC and/or IIT have any compliance
11 issues in any of these sites?

12 A No.

13 Q Rather than just go through and waste
14 time, Columbus, Georgia; Wheatland, Kansas; Wyandot,
15 Ohio; Clarion, Pennsylvania; New Haven, Connecticut;
16 Gary, Indiana; Des Plaines, Illinois; Westchester,
17 Illinois; Belleville, Illinois; are those sites at
18 which RTC and the trust operate -- or operated or
19 operate?

20 A With the exception of 31st Street and
21 Westchester.

22 Q Okay.

23 A Right. Those are no longer --

24 Q Either RTC --

25 A -- part of our --

1 Q -- or IIT ever have any compliance issues
2 at any of those sites?

3 A No.

4 Q All right. And then the two that you
5 mentioned, Westchester and 31st Street, those are
6 sites that only RTC operated?

7 A Right.

8 Q Did RTC ever have any compliance issues
9 at those sites?

10 A No.

11 Q Okay. Now, with regard to Peoria, what,
12 if any, compliance issues existed or exist?

13 A Well, I think the lion's share of the
14 issue is capacity to consume fuel out there. We
15 need to bring the second engine online. I think
16 Mr. Sloan has estimated, and, you know, I tend to
17 agree, there's 600 CFM of gas available out there,
18 and we need two engines to consume all that gas.

19 Q What's the compliance issue for that?

20 A Well, its results -- long-term results in
21 some positive wellhead pressures --

22 Q Um-hmm.

23 A -- out in the well field as opposed --
24 the regulation -- you have to have a vacuum in every
25 well.

1 Q Why didn't RTC fix that?

2 A Well, you know, we began to fix it, but
3 it's just we didn't have the money to finish to
4 bring the second engine online.

5 Q What's the trust going to do to fix that?

6 A The trust is going to continue that work
7 and finish bringing the second engine online. And
8 then, of course, we talked about the third engine as
9 well, we'll bring that over.

10 Q And if that occurs, that will ameliorate
11 the problem?

12 A That will help tremendously. That's not
13 to say we don't have some work to do out in the
14 field on some -- perhaps abandoning some wells,
15 maybe some wellhead repairs, and perhaps some
16 lateral line adjustments.

17 Q When is the trust going to jump on that?

18 A As soon as weather breaks. You know, the
19 effective date being sometime in March hopefully.
20 As soon as the weather breaks and we get on top of
21 the landfill.

22 Q Is it possible to do it before then?

23 A It's possible, very difficult. You can't
24 fuse pipe below 28 degrees Fahrenheit. It will
25 fail.

1 Q Okay. What, if any, other compliance
2 issues exist out of Peoria in which you're aware?

3 A There are -- there's settlement on the
4 landfill, similar to what I talked about with
5 Beecher, where that needs to be repaired because,
6 otherwise, you know, water can get inside the waste
7 mass and reduce your recovery percentage. And
8 that's not just with IIT's features. We believe
9 some of that is with Peoria's features. And both
10 parties are going to work on that.

11 Q Why didn't RTC fix that?

12 A Well, again, it's a function of available
13 cash to go out there and do it.

14 Q When is the trust going to fix that?

15 A We'll be working on it as soon as the
16 weather breaks through this summer.

17 Q Okay. What about jumper lines? Do you
18 know what jumper lines are?

19 A Yes.

20 Q What are jumper lines?

21 A Jumper lines are a way to connect to
22 different points of gas extraction, if you will,
23 over an area that may be settled and blocked for gas
24 extraction. Perhaps you may have a buried pipe
25 that's down deep that's -- the leachate has blocked

1 it. And so you connect at a prior point to the
2 blockage and an after point to the blockage, almost
3 like a bypass to your heart, that type of a thing,
4 where you allow the flow of gas to get around that
5 blockage, if you will.

6 Q Okay.

7 A And it's a pipe. It's normally a
8 four-inch diameter pipe in order to do that.

9 THE COURT: And it's above ground?

10 THE WITNESS: It's above ground.

11 BY MR. JORDAN:

12 Q Is that allowed, do you understand it, by
13 the regulations?

14 A Yeah, we believe it is allowed by the
15 regulations.

16 Q How do you -- what do you have to do to
17 find out whether it's okay for the IEPA?

18 A Well, you have to -- we had our
19 consultants contact the EIPA on this issue, and the
20 IEPA did not have any immediate issues with it.
21 However, at the request of Peoria City and County,
22 we did prepare a significate permit modification to
23 request formal approval to have the jumper lines.

24 Q What's the status of that?

25 A We're waiting for Peoria City and County

1 to signed that application. They haven't signed it.

2 Q And once they sign it?

3 A We're going to send it in to the agency,
4 and the agency hopefully will act on it.

5 Q Why don't you just sign it and send it
6 in?

7 A From a regulatory perspective, I cannot
8 sign under the land permits. That can only be done
9 by the owner and operator of the landfill itself.

10 Q Okay. What, if any -- I guess we're down
11 to the last site, and then we'll go back to the pro
12 formas. What, if any, compliance issues exist or
13 have existed in Springfield?

14 A Well, Springfield, put into category two
15 of available combustion capacity. I think what
16 causes some issues there, certainly the overheight.
17 There was --

18 Q What overheight?

19 A Well, Springfield, the landfill --

20 Q Oh, I think we did --

21 A Yeah, it's overheight. Literally if you
22 went on top of that landfill and scuffed your boot,
23 you'd see garbage. I mean, that's how bad the cap
24 was.

25 Q So is there a cap at Springfield?

1 A I think there is now. But during our
2 operating years there, it was minimal --

3 Q Okay.

4 A -- and continued to be an issue. The
5 problem with that is if you design your system, you
6 know, to extract gas out of the landfill and you've
7 got -- I mean, it's like a Glad Bag. If it zips
8 shut, you put a straw in it, you can pull that gas
9 out. If there is a rip in the Glad Bag, you're not
10 going to be able to pull the gas out without pulling
11 oxygen in, and that's exactly what happens. Again,
12 it's the fire triangle, oxygen, fire, and heat. You
13 have a potential for subsurface oxidation. What
14 that means to us is that we couldn't run a vacuum on
15 the hill without a risk of a fire, so you had to run
16 a positive.

17 Q Were you cited for too much oxygen at
18 Springfield?

19 A Yes, and positive wellhead pressure. And
20 there were some issues with stack testing on the
21 engines. We were never able to get to full
22 operating capacity such that we could stack test.

23 Q Okay. And then, you know, once Allied
24 puts in -- you know, reduces the overheight, reduces
25 overgirth --

1 A Right.

2 Q -- puts in the cap, puts in the gas
3 collection system and you guys finish it up, what do
4 you anticipate with regard to compliance issues?

5 A I think we're going to be largely
6 compliant. With the cap in place there, we won't
7 have the issue of oxygen intrusion. We won't have
8 the issue of positive pressure. And certainly with
9 two engines down there running, that's enough to
10 manage the available gas. So I don't see that as
11 being an ongoing issue.

12 Q Well, you say "largely compliant." That
13 implies to me that, you know, maybe you're not going
14 to be compliant in some respect. I mean, are you
15 just being careful or are there issues, compliance
16 issues that you think are going --

17 A Well, it's -- I mean, over my career,
18 I've been doing this for 25 years, you're subject to
19 human error. That's part of it. You know, people
20 will make mistakes. Nobody is perfect. And so
21 you're going to have to address those. But from a
22 comparative basis, I mean, it's far, far better than
23 it was.

24 Q Why is that?

25 A Again, the features are functionally in

1 place that weren't there before. We've got a cap.

2 Q What difference does it have, the fact
3 that you had money that you didn't have before?

4 A Well, you know, we can pay for that
5 collection system. That's within the cap. We can
6 pay for bringing the two combustion units down and
7 hooking those up to the grid. And on an operational
8 going-forward basis, we've got the contract with
9 CILCO to pay for the ongoing O&M.

10 Q And what's the contract from CILCO?

11 A This is a power purchase agreement with
12 CILCO that we have. I think it's an agreement for
13 parallel operation.

14 Q That's for electricity, right?

15 A Yeah, it's electricity production.

16 Q And is that the only electricity site and
17 the others are going to be gas pipeline?

18 A Peoria and Springfield will be
19 electricity.

20 Q Right.

21 A And then gas pipeline will be Litchfield
22 and Bloomington.

23 Q What about Peoria? I'm sorry. Is
24 that --

25 A Peoria is electricity.

1 Q Who do you sell the electricity to for
2 Peoria?

3 A It's called AmerenCILCO.

4 Q And same with Springfield?

5 A Right.

6 Q And you have a relationship with them
7 that you put this in place?

8 A I have the relationship with them now and
9 will continue it.

10 Q And did you just enter into some sort of
11 agreement with them?

12 A We did. We entered into a settlement
13 agreement that was entered last week.

14 Q Okay.

15 A And, of course, there's also the court
16 order that assigns the contract over to IIT.

17 Q What court order? This court's order?

18 A Yeah.

19 Q Okay. And you're in good paper with
20 Ameren, as far as you know?

21 A Right.

22 Q Okay. Now, and then the Bloomington
23 Litchfield sites, the gas goes where?

24 A Litchfield and --

25 Q Or to whom, I should say.

1 A Yeah. Litchfield, the gas is going to go
2 to the AmerenCILCO. They have a gas pipeline that
3 actually bisects the site, so it will be fed into
4 that line.

5 Q Is there an alternative there to
6 AmerenCILCO?

7 A Maybe, but that's the best one. We've
8 had multiple conversations with them. It looks
9 pretty good.

10 Q Okay.

11 A And AmerenCILCO is very creditworthy as
12 far as paying for the fuel, so I'm all for that.

13 Q And then the last site is Bloomington?

14 A Bloomington, right. There's -- the first
15 option would be to tie in -- there's an existing
16 landfill there next to or adjacent to the McLean
17 landfill that's feeding gas into a Cargill plant,
18 landfill gas. Our hope is to supplement that off of
19 that gas. If that doesn't work, I've had
20 conversations with Nicor Energy, and they would take
21 the fuel as well.

22 Q Where is their pipeline in relation --

23 A I don't recall exactly. It's in the
24 area.

25 Q It's in the area of Bloomington?

1 A Yeah.

2 MR. JORDAN: Okay. Can we look at
3 Exhibit 34, Your Honor?

4 THE COURT: Yes.

5 BY MR. JORDAN:

6 Q Okay. Now, taking a look at this, this
7 is -- what is this?

8 A This -- I believe this is the Sangamon
9 pro forma that I prepared.

10 Q Yeah.

11 MR. O'MEARA: Your Honor, we would
12 object. Foundation grounds. And I think it's
13 inadmissible opinion evidence by a nonexpert.

14 THE COURT: It's overruled. These are
15 the projections that he, as the chief operating
16 executive officer of this enterprise, is basing his
17 determinations on whether to go forward with a
18 particular proposal.

19 BY MR. JORDAN:

20 Q Now, the assumptions that you utilized
21 for Sangamon, are they the same in terms of the
22 kilowatt per hour and the CILCO published rates and
23 the inflation adjustments as we looked at with the
24 Peoria landfill?

25 A Yes.

1 Q Are there any differences in your
2 assumptions?

3 A Not on the assumptions other than the
4 type of engines that are running.

5 Q Okay. I just want to make sure so that
6 the court knows that we're apples and apples.

7 A Right.

8 Q That you're being consistent in your pro
9 formas.

10 A Yes.

11 Q Right. So what do you anticipate with
12 regard to -- this is an operating pro forma?

13 A It is a operating pro forma.

14 Q Okay. And what do you -- what do you
15 anticipate in terms of electric revenues starting
16 into 2008 and, you know, how did you arrive at the
17 initial number?

18 A Well, in '08 my hope is to begin
19 operation in September and run it for four months,
20 so that's a four-month number. But the baseline
21 into that would be -- I multiply it out, the
22 capacity of each Jenbacher engine, multiple it by a
23 time factor, multiply it by an uptime factor,
24 multiply it by parasitic factor, and multiply it by
25 the rate. And that's for two engines running.

1 Q How did you figure out the time factor
2 and the parasitic factor and all the other factors
3 that you spoke so quickly I didn't pick them all up?

4 A Sure. Experience, industry standards,
5 what we've experienced as a company, what I know in
6 operating these engines. I know what the parasitic
7 load is for Jenbachers. I know what the uptime
8 expected is for Jenbachers. I know what the
9 kilowatt rating is for Jenbachers.

10 Q Okay. How long have you worked with
11 Jenbachers?

12 A Since 1996, so 12 years.

13 Q Okay. And, you know, so as not to
14 belabor the court, you have various expense
15 projections here. And we went over for Peoria the
16 fact that you -- these were historical-based expense
17 numbers. Do you use a different methodology or the
18 same methodology for this pro forma?

19 A It was the same. It was the same. The
20 expense number, you'll see equipment maintenance is
21 a bit higher for the Jenbachers. That just goes
22 with the territory. But it was the same based on my
23 experience --

24 Q Okay.

25 A -- with these engines.

1 Q Okay. And so these are net cash flow
2 positive for each year; is that right?

3 A Yes.

4 Q Now, I notice at the bottom of the first
5 two that we looked at, and we might as well address
6 this, it says payment to IIT, ten percent of
7 something, and you're going to explain what that is.

8 A Yeah.

9 Q And then payment to lender, 90 percent of
10 something. Now, that 90 percent number, is that a
11 dividend or is that just the way that you were
12 paying the loan?

13 A This is -- we call this a cash flow type
14 mortgage.

15 Q Um-hmm.

16 A But this is how we're paying the loan, on
17 a percentage basis. And I'll note that that number
18 will be tweaked. You know, currently thinking
19 75/25. But we'll tweak that a bit, so...

20 Q Now, if the loan gets paid down to zero,
21 do you have to pay anything to the lender?

22 A No.

23 Q Okay. So this is just the mechanism for
24 paying that back?

25 A Right, right.

1 Q And so --

2 A The loan agreement says the interest has
3 to be paid first, and any additional principal can
4 be paid, and I can prepay it anytime I want.

5 Q Okay. Now, you know, my mortgage on my
6 house, which I'm proud to say is probably lower than
7 anybody else in the room here, I'm a frugal man, I
8 pay a set amount every month. Do you -- are you
9 required to pay a set amount every month to the
10 lenders here?

11 A No.

12 Q Okay. It just is based upon -- it has to
13 be a positive and then they get paid?

14 A Right.

15 Q Okay. And even if you had a bad month
16 and couldn't pay them, is there -- have you -- do
17 you have any reason to believe you wouldn't be able
18 to continue drawing a line?

19 A No, no.

20 Q Okay.

21 A That's the beauty of this type of
22 arrangement.

23 Q Okay. And so is this -- does this sum up
24 along with the other one sum up to some number? I
25 don't think it's summed, but what is it -- for

1 Peoria and for Sangamon, what do you expect over the
2 life of this? How much, you know, positive cash
3 flow do you expect to receive?

4 A I'd have to look at it again, but I would
5 expect --

6 Q Well, here it's -- just -- we'll --

7 A Yeah.

8 Q We'll look at --

9 A Yeah.

10 Q -- the other two and then --

11 A I mean, I could tell you for all four. I
12 remember that number off the top of my head. But I
13 just don't -- I can't bisect it, you know, into
14 individual sites.

15 MR. JORDAN: Your Honor, could we look at
16 Exhibit 36, please? I'm sorry. 37, please.

17 BY MR. JORDAN:

18 Q And this would be the pro forma for
19 Litchfield; is that correct?

20 A I think so, yeah.

21 MR. JORDAN: Can we go all the way to the
22 left, Your Honor, please? There we go.

23 BY MR. JORDAN:

24 Q Is this the pro forma for Litchfield?

25 THE COURT: That's what it says.

1 THE WITNESS: Yeah.

2 MR. JORDAN: Okay.

3 BY MR. JORDAN:

4 Q And you utilize the same assumptions, the
5 same historical expenses as you did in the other
6 two; is that correct? The same methodology, rather,
7 not the same expenses.

8 A Well, similar methodology except that
9 we -- I'm using a -- the NYMEX spot natural gas
10 price.

11 Q Okay.

12 A And as far as -- that's the factor that
13 we paid for, so that's -- as opposed to being paid
14 by electrons that you're producing, you're being
15 paid by gas that you're producing.

16 Q And that's Exhibit 30, that NYMEX, Henry
17 Hub Natural Gas, quotes?

18 A Right.

19 Q Where did you get that?

20 A It's off the NYMEX website.

21 Q What's NYMEX?

22 A It's a New York Mercantile Exchange, and
23 they...

24 Q Okay.

25 A You know, it's a large mercantile

1 exchange that publishes current and forward pricing
2 on various energy futures.

3 Q Okay. And so you have that number. How
4 did you come down to MMBTU? First off, what's an
5 MMBTU?

6 A That's 1 million BTUs.

7 Q Okay. How did you come down to a price
8 per MMBTU?

9 A I looked at the forward pricing out eight
10 to ten years. And it averaged above \$8, so I used
11 \$8 conservatively.

12 Q Okay. And how did you get to the nominal
13 landfill gas production for 50 CFM through 2020?

14 A This was Carl VanSoustra who is the
15 expert engineer for Allied Waste.

16 Q That's Allied's -- you're using Allied's
17 numbers now?

18 A Oh, yeah, yeah. I used Allied's numbers.
19 And he shows on his estimation that there's -- there
20 will be 450 CFM -- there's more than 450 at some
21 times, but nominally there will be 450 CFM
22 through 2020.

23 Q All right. And then without boring the
24 court, that's cash flow positive?

25 A It is, yeah.

1 Q Because I'm sure that the court has seen
2 far more of these than I ever will.

3 Looking at Exhibit 38, if you
4 would. And, again, I think the court is able to
5 read these things just as easy as we can.

6 A Right.

7 Q So what we'll do is -- I'm very
8 interested in knowing the assumptions that you
9 utilized and, you know, saying -- I assume all of
10 them uses inflation figures, is that correct, all
11 four?

12 A Oh, yeah, three percent.

13 Q Yeah.

14 A Right.

15 Q And you utilized the same methodology for
16 utilizing expenses?

17 A Right.

18 Q What -- and your assumptions in this
19 particular pro forma were similar to the Litchfield
20 NYMEX price?

21 A That's correct.

22 Q Utilized the same methodology in this as
23 the Litchfield pro forma?

24 A This is Bloomington, right, yeah.

25 Q Same as --

1 A Right.

2 Q -- the Litchfield?

3 A You are correct, yes.

4 Q Right. For Bloomington?

5 A Right.

6 Q And, in fact, this site is cash flow

7 positive in a big way?

8 A Yes.

9 Q All right. And now I notice that -- when
10 do you think you're going on in Bloomington?

11 A 2013.

12 Q Okay. So you have two years here, 2011
13 and 2012. We can probably discount those?

14 A Right.

15 Q Right. And why did you change your
16 projection? Was it based upon Terry Benz's
17 testimony or something else?

18 A Well, no, it's exactly based on Terry
19 Benz's testimony. I think he said five to six years
20 before they'd be done filling and capping.

21 Q Who is Terry Benz?

22 A He's an environmental engineer for Allied
23 Waste Industries.

24 Q Okay. So when he testified at his
25 deposition and you had to -- basically you're going

1 to lose your first two years?

2 A Right.

3 Q Okay. Now, overall for all of these
4 sites, what are your anticipated draws on line and
5 how are you going to be able to keep yourself within
6 the \$3 million.

7 A Sure. Well, in 2008, I plan to draw
8 1.25 million.

9 Q For?

10 A For Springfield. That's a million
11 dollars, 250,000 for Peoria.

12 Q Okay.

13 A Now, that's going to leave me --

14 Q When do you plan on drawing that other
15 than the initial \$60,000 that's due in about 16
16 days?

17 A I would draw it -- draw some for the
18 engine real quick. You know, the plant would be
19 more late summer, early fall. Probably late summer
20 would be the draw. So I would say --

21 Q When you say "the plant," you mean the --

22 A Yeah, the --

23 Q -- Springfield plant?

24 A The Springfield plant, yeah, would be the
25 two engines.

1 Now, Peoria would be pretty quick.

2 As soon as the weather breaks, we're going to be
3 spending a lot of money out there.

4 Q Okay.

5 A So I would say between the effective date
6 of an order and certainly through early fall would
7 be the expenditure time frame --

8 Q Okay.

9 A -- for that 1.25 million.

10 Q Based upon your discussions with
11 Scattered, do you have any reason to believe that
12 you'll have the funds available?

13 A Oh, absolutely.

14 Q Okay. And then so -- so you get the
15 million-two-fifty. And then based upon those pro
16 formas, what happens to the principal balance?

17 A Well, what's going to happen, the -- you
18 know, the principal balance on its face would drop
19 to 1.75 million. However, we're operating through
20 that period.

21 Q Um-hmm.

22 A And so you take the amount to the lender
23 and subtract the amount that goes to the lender,
24 subtract the interest that has to be paid based on
25 the amount that's outstanding on the loan. And in

1 2008, we'd end up paying about \$150,000 down on that
2 loan. So really I'd end up at the end of 2008 with
3 about \$1.9 million left.

4 Q Available?

5 A Available, right. So that's '08.

6 Q '09, what happens?

7 A '09 is an operating year and a
8 designing -- design and permitting year. But the
9 operating year for '09 is operating Peoria and
10 Springfield, two engines each. And what happens
11 there is we obviously have to pay interest on the
12 outstanding balance. That's going to be close to
13 \$100,000.

14 Q Total?

15 A Total in '09. But then by operating
16 Peoria and Springfield and taking the amount to the
17 lender, you subtract the interest that's already
18 paid, we're going to be able to pay down close to
19 \$400,000 on that line.

20 Q So you'll have about 2.3 available?

21 A Right. At the end of '09, I'll have
22 about 2.2, 2.3.

23 Q Okay.

24 A So then we go into 2010. And Litchfield,
25 we know I've got to pay 400,000 for the collection

1 system, and we estimate \$1 million for a 450
2 CFM-type scrubbing plant and infrastructure. So I'm
3 going to draw \$1.4 million new capital down.

4 Q So you've got about a million?

5 A Gives me about a million.

6 Q Yeah.

7 A Gives me about a million, maybe 900,000.

8 However, again, we're still operating during 2010
9 Peoria and Springfield.

10 Q Right.

11 A So you've got to add in that same
12 \$400,000 that we did in 2009 to bring that line back
13 up to about 1.4 million.

14 Q Okay.

15 A And that's the end of 2010. So now after
16 2010 we're running three sites. We're running
17 Litchfield, Peoria, Springfield. The result of that
18 is I'm able to pay the interest, which ranges
19 between 100 to 150,000 in those two years. You
20 subtract out that interest, there's still money left
21 over to the tune of about \$600,000 each year to pay
22 down on that loan. So if we were -- you know, we
23 started at 2.2 million, we subtracted the amount
24 needed for Litchfield and you added all those three
25 years of principal payment down, I'm still into

1 about \$2.6 million as I enter 2003 -- or 2013 of
2 available credit. So 2013, I've got 2.6 available.

3 2013, I build Bloomington. It's a
4 bigger site. 750 CFM plant, so it's \$1.5 million
5 for the plant. And I know I have to pay \$450,000
6 for the collection system, so it's 1.95 million.
7 That draws me down to about 7, \$800,000 of available
8 credit. But, again, that's the year I'm running
9 three sites, and so I'll add \$600,000 refreshed into
10 the loan. I'll come out of 2013 with around
11 \$1.4 million available on the loan.

12 And then in 2014, I'm running four
13 sites, and that's when you really pay down the loan
14 fast. I mean, to the tune of \$1.5 million a year.
15 So by the end of 2015, the loan is paid off. And
16 then we just run the last five years, 2016 to 2020,
17 without debt service.

18 Q Okay. Now, there was an issue that came
19 up at the deposition last week, or whenever it was,
20 January 28th, my daughter's birthday, so I know
21 that, Mr. O'Meara remembers, I'm sure, about the
22 standing of RTC in the State of Illinois.

23 A Oh, okay.

24 Q And, first off, where is RTC
25 incorporated?

1 A Delaware.

2 Q Okay. And is it in good standing as far
3 as you know in Delaware?

4 A It is.

5 Q Okay. And how about in Illinois?

6 A Well, we looked into that, you know,
7 since my dep, and it is not in --

8 Q When you went --

9 A -- good standing.

10 Q -- into your dep, did you think that they
11 were in good standing?

12 A I thought it was.

13 Q Okay. And what did you find out during
14 your dep?

15 A I was shown a document that indicated it
16 may not be.

17 Q So what did you do?

18 A I went and investigated it and determined
19 it was not.

20 Q And what do you have to pay to get in
21 good standing?

22 A I think the number is -- we went to one
23 of the bankruptcy lawyers for the State of Illinois.
24 I think the number was \$80,000.

25 Q Was that Mr. Newbold?

1 A Right, right, right.

2 Q And if you pay -- what's the \$80,000 made
3 up of, do you know?

4 A It was some State of Illinois payroll
5 taxes for some amount and an excise tax.

6 Q Okay. Are these in solid waste then?

7 A Yeah.

8 Q And if the court -- well, first off, have
9 you ever gotten any notices or anything else from
10 the IEPA about this?

11 A No.

12 Q Have you ever actually heard from the
13 state -- Secretary of State of Illinois about this?

14 A I have not, no.

15 Q Okay. If the court requires as a part of
16 the assumption and assignment that you have to pay
17 this \$80,000 on behalf of RTC, would the trust do
18 it?

19 A Yes.

20 Q Okay. Is this a Chapter 7 claim, a
21 Chapter 11 claim, or a pre-petition claim?

22 A I thought it was Chapter 11.

23 Q Okay.

24 A Yeah, I thought it was 2005.

25 Q Okay. So if the \$80,000 has to be spent

1 or, alternatively, if the State of Illinois issued
2 you a notice saying that, you know, RTC has a
3 problem because this situation is revoked and we're
4 going to cancel the permit unless it's remedied,
5 what would Illinois Investment Trust do?

6 A We would remedy it, pay it.

7 Q Pay the 80,000?

8 A Sure.

9 Q Okay. But nobody has ever -- nobody from
10 the state has ever said that to you?

11 A No.

12 Q Okay. Just to make sure Mr. Schmidt is
13 right and I'm wrong, what are the costs to repair
14 Peoria?

15 A We've got to spend about \$30,000
16 additional to bring the second engine online.

17 Q Right.

18 A I figure about 50,000 to bring the third
19 engine online. And then I'm estimating in the
20 \$100,000 range to go on the landfill and do what we
21 need to do with the crews to take care of the
22 settlement issues and any repairs. I think that
23 about covers it.

24 Q Those are all numbers that when you went
25 through that draw on the line scenario that you went

1 through, those were included in there?

2 A Oh, yeah, yeah, drawing on the line,
3 right.

4 Q Now, there was some conversation about --
5 in one of the depositions, I think, about using a
6 loop system for the GCCS as opposed to a Christmas
7 tree system. Do you recall that?

8 A I do.

9 Q Okay. And, now, what does RTC -- what
10 did RCC install?

11 A We installed what's loosely defined as
12 the Christmas tree system. It's just a spine with
13 laterals and headers as opposed to a loop. It's a
14 design preference.

15 Q Who was the CQA person on that when you
16 put that Christmas tree in Peoria?

17 A It was Mr. Sloan and his staff.

18 Q And did he approve that?

19 A Yes.

20 Q Okay. So now there is some talk about
21 utilizing a loop system. What would it cost to put
22 in a loop system?

23 A Well, it's a whole design change. I
24 mean, I think it's several hundred thousand dollars
25 to put in a loop system. Maybe 7 or 800,000. I see

1 some numbers --

2 Q Okay.

3 A -- thrown around.

4 Q Is there a cap on what RTC -- I'm sorry,
5 the trust's share of that would be?

6 A Yes.

7 Q What's that cap?

8 A For the stipulation, it's 500,000.

9 Q Okay. So if Peoria chose to rip out
10 the -- you know, get a permit from the IEPA and do
11 everything and change that system, they would have
12 to be out-of-pocket monies to do that; is that
13 correct?

14 A Sure.

15 Q Would it change -- based upon your
16 experience, would it change the amount of royalties
17 that Peoria would get?

18 A No.

19 Q Okay. So is there any -- do you
20 anticipate that they're actually going to go through
21 that process?

22 A I would be surprised. The system as
23 designed is designed to work fine.

24 Q Yeah.

25 A There has to be some changes to and

1 modifications and repairs. But --

2 Q That's all the --

3 A -- from a design standpoint, it should
4 work fine.

5 Q That's all in the budget, right?

6 A Right.

7 Q Okay. And so the costs -- just to
8 summarize, the cost -- the total cost that IIT has
9 to have to comply with the stipulation at Peoria is
10 what?

11 A 250,000.

12 Q And that's within the framework that --
13 when you went through the line of credit draws, that
14 money is available?

15 A Right.

16 Q And the amount of monies that you need at
17 Springfield under the stipulation are how much?

18 A \$1 million.

19 Q Okay. And that's within that draw?

20 A Yes.

21 Q And also included in there is all the
22 operating expenses that IIT has for Peoria and
23 Springfield, right?

24 A Yeah, they're included in the operating
25 pro forma, right.

1 Q Okay. And then Litchfield, the cost is
2 how much?

3 A Per the stipulation, it's 400,000.

4 Q Right.

5 A And then if I build a plant, obviously I
6 want to build a plant, it's another million. 1.4
7 million.

8 Q And we went through that?

9 A Correct.

10 Q And then Bloomington, the cost under the
11 stipulation is?

12 A 449,000 for the collection system, and
13 I'm estimating \$1.5 million for the scrubber plant.

14 Q And as you wait for the Litchfield and
15 Bloomington, there's an interest cost, right?

16 A There is.

17 Q And that's built into your numbers?

18 A Yes.

19 Q And you're still cash flow positive?

20 A Yes.

21 MR. JORDAN: All right. We'll pass the
22 witness, Your Honor.

23 THE COURT: We'll take a ten-minute
24 recess.

25 (Brief recess.)

1 THE COURT: Go ahead.

2 MR. O'MEARA: All right. Good afternoon,
3 Mr. Connolly.

4 THE WITNESS: Good afternoon.

5 CROSS-EXAMINATION

6 BY MR. O'MEARA:

7 Q You've been continuously employed by RTC
8 since 1995, correct?

9 A Yes.

10 Q And you've been the president of RTC
11 since 2001?

12 A Correct.

13 Q Okay. Now, it's your position, isn't it,
14 Mr. Connolly, that the RTC of which you're the
15 president right now is not the RTC that's currently
16 in bankruptcy?

17 A Yes.

18 Q Okay. You consider yourself president of
19 what you refer to as the nondebtor RTC?

20 A Sure.

21 Q Okay. And it's true, isn't it, that you
22 started working -- or you claim you started working
23 for the nondebtor RTC in 1995, right?

24 A That's right.

25 Q Okay. And you continued to be employed

1 by nondebtor RTC until the bankruptcy filing in this
2 case in 1999?

3 A Right.

4 Q And at that time, you ceased working for
5 nondebtor RTC, correct?

6 A That's right.

7 Q Okay. And started working for debtor
8 RTC?

9 A Sure. Again, I'm not a bankruptcy
10 lawyer, but I think that makes sense.

11 Q Okay.

12 A Yeah.

13 Q And then when the settlement agreement
14 happened between Chiplease, Scattered, and the
15 Chapter 7 trustee in this case, you ceased working
16 for the debtor RTC and began working for nondebtor
17 RTC again; isn't that right?

18 A Again, that's my general understanding.
19 I know we went through this in my dep. And I'll
20 just say I'm not bankruptcy lawyer, but that's my
21 general understanding of how that works.

22 Q The debtor RTC and nondebtor RTC aren't
23 two separate companies to your knowledge, are they?

24 A I don't believe so, no.

25 Q Does the nondebtor RTC have any employees

1 other than you?

2 A Yes. And, again, as we talked about in
3 my dep, it being transitioned into IIT. But the
4 answer is yes.

5 Q And who are they?

6 A It's myself, Richard Walker, Rob
7 Fortelka, Mike Watson, Johnny Johnson, and Phil
8 Weeks.

9 Q Okay. And each of these individuals are
10 also employed by IIT?

11 A Effectively, yes. Again, we're
12 transitioning it.

13 Q You're transitioning it or they're
14 employees?

15 A They are employees.

16 Q Does IIT have any employees who weren't
17 also RTC employees?

18 A I didn't hear the question.

19 Q Does IIT have -- and I'll refer to it as
20 IIT or the trust. Does the trust have any employees
21 who weren't also RTC employees?

22 A No.

23 Q Okay. Now, you testified, didn't you,
24 Mr. Connolly, during your deposition that nondebtor
25 RTC is currently operating a landfill gas-to-energy

1 project at the Peoria landfill?

2 A I think that's generally correct. I
3 think we were referring more into the CILCO contract
4 than anything else there.

5 Q Okay. And nondebtor RTC's operations at
6 the Peoria site are generating revenue?

7 A Yes.

8 Q Approximately 25,000 a month?

9 A Give or take.

10 Q Okay. Now, in addition to being
11 president of nondebtor RTC, you're also the trustee
12 for the Illinois Investment Trust, correct?

13 A Right.

14 Q Before August of 2006, Mr. Connolly, have
15 you ever been the trustee of anything?

16 A There may have been a board I was on at
17 one time with the Kiwanis Club. That's just --
18 that's a -- that rings a bell, that I may have been
19 a trustee on a board there.

20 Q But of any other trusts?

21 A Not that I'm aware of, no.

22 Q Okay. Are you currently a trustee of any
23 other trusts?

24 A No.

25 Q Now, Scattered and Chiplease are the

1 beneficiaries under the trust agreement; isn't that
2 right?

3 A That's my understanding, yes.

4 Q Now, you had testified, I think, during
5 your direct examination with Mr. Jordan that you
6 hoped to remain the trustee for the foreseeable
7 future?

8 A Sure.

9 Q But under the trust agreement, that's up
10 to the beneficiaries; isn't that right?

11 A That's generally true, yes.

12 Q Okay. Well, isn't it true that the
13 beneficiaries under the trust can replace you at any
14 time?

15 A Sure, that's true. You know, I mean no
16 disrespect to you, Mr. O'Meara. I mean, Reed Smith
17 could replace you, but I don't think they have plans
18 to. And I don't think Scattered or Chiplease have
19 plans to replace me. I mean, it's just a fact
20 that's out there, no --

21 Q So it's true, though, that Scattered and
22 Chiplease could replace you if they wanted to; isn't
23 that right.

24 A Sure.

25 Q Now, Scattered and Chiplease are also the

1 guarantors of the trust, correct?

2 A Yes.

3 Q Okay. And you're familiar with the trust
4 provisions?

5 A Let me -- I don't know that Chiplease is
6 a grantor. I know that Scattered is. I'd have to
7 look at the document.

8 Q Wasn't Chiplease added as a guarantor
9 when they were added as a beneficiary?

10 A I think that's right, yeah. I mean, I'll
11 take your word for it.

12 Q Now, if IIT is successful in obtaining
13 the contracts that we're here on today, they'll
14 become part of the trust property, right?

15 A Yes.

16 Q Okay. And isn't it true, Mr. Connolly,
17 that Scattered and Chiplease can reacquire the trust
18 property at any time they want to by merely
19 substituting equivalent value property?

20 A That you'd have to point me to in the
21 trust document --

22 Q Okay. Let's look at --

23 A -- to figure that out.

24 Q -- Allied Exhibit 1.

25 THE COURT: If that's already in evidence

1 and you have the ability to argue from it, what does
2 it add to have him identify the passage you want to
3 argue from?

4 MR. O'MEARA: All right. We can move on
5 then, Your Honor.

6 BY MR. O'MEARA:

7 Q Mr. Connolly, as the trustee of the
8 trust, you've also got broad powers; isn't that
9 right?

10 A Yes.

11 Q Now, isn't it true that you can terminate
12 the trust at any time and distribute the property of
13 the trust to the beneficiaries?

14 A That may be true. I don't know that
15 that's taken out of context. I'd like to look at
16 that piece, if we could.

17 THE COURT: Okay. This is IIT Exhibit 1,
18 Mr. O'Meara?

19 MR. O'MEARA: Well, I think it's -- I've
20 got Allied's Exhibit 1, but I'm not sure if it's the
21 same, if IIT's is the same trust agreement.

22 MR. JORDAN: Your Honor, we --

23 MR. O'MEARA: We both may have it as
24 Exhibit 1.

25 MR. JORDAN: -- object to the relevance

1 of this. Unless there's something they can
2 establish here, some intention or likelihood that
3 they're going to terminate the trust and
4 distribute --

5 THE COURT: It's overruled.

6 What section do you want to look at?

7 MR. O'MEARA: It's paragraph 5.4, which,
8 I believe, is on page 13.

9 THE COURT: Discretionary termination.

10 MR. O'MEARA: Removal of trustee, 7.3.

11 THE COURT: You said 7.3? I thought you
12 said 5.4.

13 MR. O'MEARA: I think that was when we
14 were talking about equivalent value. Oh, I'm sorry.
15 Yes, it was 5.4. I apologize, Your Honor.

16 THE COURT: Okay. Oh, I see.

17 Discretionary termination.

18 THE WITNESS: Okay. I see that.

19 BY MR. O'MEARA:

20 Q So do you recall, Mr. Connolly, or does
21 that refresh your recollection that you can
22 terminate this trust at any time in your discretion.

23 A Yes, it does refresh my recollection,
24 and, yes, I can.

25 Q Now, prior to August of 2006, Mr.

1 Connolly, did the trust operate anything?

2 A I attended Mr. Jahelka's deposition and I
3 can tell you what he said. You know, they used it
4 as an investment vehicle for dividend reinvestment.
5 I recall that. I don't recall anything else he
6 said.

7 Q To your knowledge, IIT hasn't operated
8 any landfill gas collection or any energy conversion
9 systems prior to August of 2006, correct?

10 A That's correct.

11 Q Okay. And to the best of your knowledge,
12 has IIT had any assets prior to the settlement
13 agreement between Chiplease and the Chapter 7
14 trustee?

15 A Again, I would answer that as to what
16 I've learned during Mr. Jahelka's deposition. It
17 sounds like there is some dividend reinvestment
18 assets that were there at one time.

19 Q Now, IIT is not currently operating a
20 landfill gas-to-energy conversion facility anywhere,
21 is it?

22 A Can you just define what you mean by
23 "conversion facility"?

24 Q I mean, are they converting landfill gas
25 to electricity anywhere?

1 A No.

2 Q Okay. Now, I think during your direct
3 examination with Mr. Jordan he asked you about
4 different landfill sites where IIT operates?

5 A Right.

6 Q I presume that's gas collection systems?

7 A That's correct.

8 Q Okay. So there's no -- there's no
9 gas-to-energy facilities at any of those sites that
10 you talked about? Well, why don't we just go
11 through each one.

12 A Yeah, that would be helpful.

13 Q Fort Dodge, Iowa. I believe you
14 testified that Fort Dodge, Iowa, IIT operates it?

15 A That's right.

16 Q Okay. And IIT has never gotten any NOVs
17 or compliance issues at that site; isn't that right?

18 A That's correct.

19 Q But IIT doesn't operate a gas-to-energy
20 conversion facility at that site, does it?

21 A No, not yet.

22 Q Has it ever?

23 A No. But we have plans to.

24 Q How about Greater New Orleans? I think
25 you testified that IIT operates there.

1 A That's right.

2 Q Okay. And there's never been any
3 violations received?

4 A No.

5 Q IIT doesn't operate a gas collection
6 energy facility there, though, does it?

7 A Well, the energy component we do not. We
8 do operate gas collection.

9 Q But no energy plant?

10 A That's right.

11 Q Never have?

12 A Never have.

13 Q Okay. How about Lansing, Illinois? I
14 think you testified that IIT operates there?

15 A That's right.

16 Q They operate a gas-to-energy conversion
17 facility there?

18 A Not currently, no.

19 Q Okay. Was it Kewanee, Illinois?

20 A Right.

21 Q Okay. I think you testified you've never
22 received any NOVs or compliance problems at that
23 site?

24 A That's right.

25 Q Okay. Does IIT operate a gas-to-energy

1 collection facility there?

2 A No, just gas collection.

3 Q Have they ever?

4 A No.

5 Q I'm going to ask you the same question in
6 regards to -- I believe you testified as to
7 Wheatland, Wyandot, and New Haven. You testified
8 you never received any compliance or
9 environmental -- never had any environmental
10 compliance problems at any of those sites; is that
11 right?

12 A Right.

13 Q IIT has never operated a gas collection
14 conversion facility at any of those sites, has it?

15 A New Haven it does. Wheatland and Wyandot
16 it does not.

17 Q Okay. How long has it operated a gas
18 collection and conversion facility at New Haven?

19 A Not the conversion facility, no. It's
20 just a gas collection facility and flares at New
21 Haven. Since the assignment order, August 2006.

22 Q Okay. So all of these sites that you
23 testified to when Mr. Jordan was asking you
24 regarding compliance issues or notice of violations
25 and you testified you never received any, none of

1 these sites ever had a gas-to-energy conversion
2 facility on them, have they?

3 A That is correct.

4 Q Okay.

5 A That is correct. Except for Lansing had
6 one a while back.

7 Q Now, I think you did testify -- or you've
8 just testified now that IIT is operating several of
9 these sites that are operating gas collection
10 systems, correct?

11 A That's right.

12 Q Now, there's expenses associated with
13 operating at those sites, isn't there?

14 A Sure.

15 Q Monitoring expense? Maintenance
16 expenses?

17 A Sure.

18 Q Okay. Is IIT receiving any revenue from
19 any of these sites?

20 A Not yet, no.

21 Q Okay. And other than the loan agreement,
22 IIT has no other source of funds; isn't that right?

23 A I wouldn't say that. But, I mean, right
24 now as I sit here today, we have the loan agreement
25 plus any throw-off from percentages that come off

1 the pro formas that go to IIT on the cash-flow-type
2 mortgage.

3 Q Well, those are projections in the
4 future, right?

5 A Sure.

6 Q But as you sit here today, other than the
7 loan agreement with Scattered and Chiplease, IIT has
8 no other source of funds, does it?

9 A No, that's not correct.

10 Q What other source of funds does it have?

11 A Well, we continue to -- we can use funds
12 from Chiplease in this interim period.

13 Q Does IIT have any money in the bank?

14 A Yes.

15 Q How much?

16 A I'm not sure. It's less than a thousand
17 dollars.

18 Q Is this in connection with the checking
19 account that you opened at MB Financial?

20 A Right.

21 Q Did you open that checking account with a
22 hundred dollars?

23 A It may have been. I can't recall the
24 exact amount.

25 Q You don't recall testifying to that at

1 your deposition?

2 A I'm trying to remember. I know it's less
3 than a thousand, so...

4 Q Now, if IIT doesn't have any funds, how
5 is it paying the operating expenses at the sites we
6 talked about?

7 A Well, right now we're getting advances
8 through -- from Chiplase over to our RTC employees
9 while we're operating those sites.

10 Q So Chiplase --

11 A And Scattered.

12 Q So Chiplase and Scattered are advancing
13 funds to IIT to cover their operating expenses?

14 A Effectively, yes. And the problem I'm
15 having here, we are in a transition phase. And, you
16 know, it's not black and white. But while we're
17 going through this transition, we, being the six
18 employees and our subcontractors, are out there
19 operating these sites. And so we are getting funds.

20 Q Well, I'm just asking where the money is
21 coming from, Mr. Connolly.

22 A Right, I understand.

23 Q Okay. So is there an agreement other
24 than the loan agreement between Scattered,
25 Chiplase, and IIT to advance these operating costs?

1 A I believe there is under the Scattered
2 loan that it procured from Caterpillar Financial
3 Services Corp. to fund RTC operations.

4 Q Those are RTC operations. We're talking
5 about IIT's operation here.

6 A I understand. And we're in a transition
7 phase right now, so...

8 The fact is these people are out
9 there working the sites. We're doing what we need
10 to do to keep things going until we get through
11 these assumption trials.

12 Q So is IIT paying your compensation right
13 now for your work as trustee?

14 A No.

15 Q Who is?

16 A Effectively that's nondebtor RTC because
17 that's --

18 Q So nondebtor RTC is paying your salary,
19 but Chiplease and Scattered are fronting the
20 operating costs?

21 A Right, right.

22 Q Is IIT currently paying its employees
23 that you mentioned?

24 A IIT is not. IIT is not the payroll
25 company paying the employees presently. But we do

1 plan to do that in very short order.

2 Q So is it Scattered, Chiplease, or
3 nondebtor RTC who are paying those employees?

4 A Nondebtor RTC.

5 Q Is that pursuant to an agreement between
6 nondebtor RTC and IIT?

7 A No, I'm not aware of any agreement.

8 Q Is that an oral agreement?

9 A No.

10 Q Is that just the way you're doing it
11 because you're the president of nondebtor RTC and
12 you're the trustee?

13 A Right, that's just the way we're doing it
14 through this transition. And the plan is after this
15 trial, we will make the formal transition for IIT to
16 be paying the bills.

17 Q Mr. Connolly, is Scattered or Chiplease
18 obligated to advance the funds for IIT's operating
19 expenses right now?

20 A Yes.

21 Q Pursuant to what?

22 A The loan agreements that are out there
23 that are effective.

24 Q Which loan agreements?

25 A The ones we've looked at today, the

1 promissory note, the loan agreement between
2 Scattered, Chiplease, and IIT.

3 Q Well, what I'm talking about is the
4 operating expenses that IIT is incurring right now.
5 And I think you've already previously testified that
6 you haven't drawn down any money from the loan
7 agreement from Scattered and Chiplease, yet
8 Scattered and Chiplease are advancing on IIT funds.

9 A Well, that's true, right.

10 Q Okay.

11 A That's true. But I think you'll notice
12 in the loan agreement the date is pretty fresh, and,
13 you know, we'll draw on that when we need to draw on
14 it.

15 Q Now, you're drawing a salary for
16 nondebtor RTC, I think you testified, correct?

17 A That's right.

18 Q And that's both for your work as
19 president of nondebtor RTC and as trustee of the
20 trust?

21 A Sure.

22 Q Okay. Have you previously testified at
23 your deposition that if there's any shortfalls,
24 that's being supplemented by Chiplease?

25 MR. JORDAN: Objection, Your Honor. It

1 sounds like improper impeachment. I'm sure he can
2 just ask a straight question and --

3 THE COURT: It's overruled.

4 THE WITNESS: If you could point me to
5 that, it would be helpful. I could have very
6 well --

7 THE COURT: If you don't remember, just
8 say you don't remember.

9 THE WITNESS: I don't remember.

10 BY MR. O'MEARA:

11 Q Now, IIT has received several --

12 THE COURT: And just so that I'm clear on
13 this, in this case I don't have any doubt that Mr.
14 Connolly is a representative of a party in interest
15 in this matter.

16 MR. JORDAN: Oh, he is the trustee --

17 THE COURT: And he can certainly be asked
18 about prior testimony that he's given.

19 MR. JORDAN: I'm not denying that.

20 THE COURT: That's fine.

21 MR. JORDAN: I thought that he should
22 just ask him a straight question.

23 THE COURT: That was a straight question,
24 did you testify such-and-such. It's a leading
25 question. It asks for a prior statement that he's

1 given, and it's entirely appropriate.

2 BY MR. O'MEARA:

3 Q Regarding the contracts that IIT does
4 possess, we talked about their operations at these
5 other landfills. Has IIT assigned any of the
6 contracts it received from Chiplase pursuant to the
7 settlement agreement?

8 A The only one -- the answer is yes.

9 Q Which one?

10 A The CILCO power purchase contract was
11 assigned.

12 Q And who was that assigned from?

13 A IIT.

14 Q To?

15 A Resource Technology.

16 Q And when was that?

17 A January 2007.

18 Q So this CILCO contract was -- fell to
19 Chiplase pursuant to the settlement agreement with
20 the Chapter 7 trustee?

21 A Oh, no, no, no, that isn't how that
22 worked.

23 Q How did IIT get the CILCO contract?

24 A It was through an August 2006 court order
25 in this court --

1 Q Okay.

2 A -- assigning that contract to IIT.

3 Q To IIT directly?

4 A Right.

5 Q It didn't first go to Chiplase?

6 A I don't believe so, no.

7 Q Okay. And then IIT assigned it to RTC?

8 A Right.

9 Q Why?

10 A The reason for that is the FERK
11 certification is -- it's in the name of RTC. It's
12 still a qualified facility name or not, but -- and
13 then the contract with CILCO was RTC. So it aligned
14 with the names and the parties.

15 Q Do you have plans to assign any other
16 contracts from IIT to RTC?

17 A No.

18 Q Any plan to assign any of the contracts
19 at issue today to RTC?

20 A No.

21 Q Now, I believe you've testified here
22 today that if the contracts are assigned, it's IIT's
23 intent to install a gas-to-electrical energy plant
24 at Sangamon, which is also known as Springfield,
25 correct?

1 A Well, correct. And, again, I will say
2 that the major infrastructure is already there for a
3 gas-to-electric plant. It's not like a greenfield.
4 We're just putting in engines to tie into that
5 system. But that is correct.

6 Q And you'd want to do a pipeline,
7 probably? I think that's what you testified to as
8 to Bloomington and Litchfield, correct?

9 A Right.

10 Q Okay. And then at Peoria, it's also a
11 gas-to-energy project?

12 A Sure.

13 Q Okay. And there's costs associated with
14 these projects, I think you testified to, correct?

15 A Yes.

16 Q And part of those costs are the cure
17 amounts under the stipulation between IIT and
18 Allied?

19 A That's correct.

20 Q Okay. Now, there are cure costs
21 identified in that stipulation? I think you looked
22 at that earlier.

23 A Yes.

24 Q Okay. And there's also -- part of that
25 stipulation requires IIT to put up a performance

1 bond at each site if it elects to operate there;
2 isn't that right?

3 A I think you're taking the language a
4 little bit out of context, but it's required to have
5 a performance bond put up, yes.

6 Q What part of it do you think I'm taking
7 out of context?

8 A I think it just says a performance. I
9 don't know that it says IIT itself has to put up the
10 bond.

11 Q Well, let's take a look at it.

12 A Okay.

13 MR. O'MEARA: Allied Exhibit 7, Your
14 Honor.

15 THE COURT: Is it the same as IIT?

16 MR. O'MEARA: I think it is, yes.

17 THE COURT: So the numbers, if you could
18 give me a section number, ought to be the same.
19 That's on the screen now.

20 MR. O'MEARA: Okay. I don't have IIT's
21 exhibit number. It's the stipulation. It's going
22 to be...

23 MR. JORDAN: 47?

24 THE COURT: Okay. It's IIT 47?

25 MR. JORDAN: Right.

1 THE COURT: Okay. All right. What
2 section?

3 MR. JORDAN: It starts on page 2.

4 BY MR. O'MEARA:

5 Q Mr. Connolly, take a look at
6 paragraph 1(b), and then you'll want to scroll over
7 to the next page once we go through it.

8 A Okay. I see that.

9 Q Now, what this contract allows -- strike
10 that.

11 There's nothing in the terms of the
12 stipulation that allows IIT to subcontract out its
13 performance bond requirements, is there?

14 A I don't see that it precludes that, no.
15 And it's very standard to have a general contractor
16 post performance bonds on these type of projects.

17 Q Let me direct your attention then to
18 paragraph (b) under Section 1. "Within 90 days of
19 IIT's written notice to Allied in any event prior to
20 IIT's entry into the site to commence work, IIT
21 shall," and then if you go to subpart (ii), "post a
22 letter of credit, performance bond, or other form of
23 security corresponding to the sites in which IIT is
24 to commence work."

25 A Right.

1 Q And you think that allows IIT to
2 subcontract out its performance bond requirement?

3 A Yeah, I do. I don't -- and, again, I'm
4 not a lawyer reading this language, but it doesn't
5 look to me to be exclusive of that. And also
6 there's language here, "reasonably acceptable to
7 Allied." You know, I would think -- if that's the
8 process that I've gone through in my career as far
9 as posting bonds for construction of facilities that
10 have had the GC post those bonds, I would think
11 that's reasonable.

12 Q You don't know what --

13 A That's just my read of it.

14 Q You don't know what Allied considers to
15 be reasonable, do you?

16 THE COURT: Well, ultimately it would be
17 a question of what a court considers reasonable.

18 THE WITNESS: Right.

19 BY MR. O'MEARA:

20 Q In addition to paying the cure costs and
21 the performance bond that we talked about, Mr.
22 Connolly, IIT also has to obtain all necessary
23 permits; isn't that right?

24 A That's correct.

25 Q Now, I believe you testified that if you

1 were unable to get a permit renewal, you could apply
2 for a construction permit, construct something, then
3 apply for an operating permit, but that you could
4 operate during the interval; isn't that right?

5 A Not exactly. But I'm happy to go through
6 the process with you a little bit.

7 Q Well, my point is is if you look at
8 subpart (3) under (b) --

9 A Okay.

10 Q -- the stipulation requires you to have
11 obtained all necessary permits before you begin
12 work; isn't that right?

13 A It says, "All applicable government
14 regulatory permits or approvals required for IIT's
15 work at such site." My testimony definitely allows
16 us to work on the site pursuant to the regulations.

17 Q Now, you've testified that IIT is going
18 to draw on this \$3 million line of credit with
19 Scattered and Chiplease to finance its operations at
20 Litchfield, Bloomington, Sangamon, and Peoria,
21 correct?

22 A That's correct.

23 Q Will you use the loan for any other
24 purposes or any other sites?

25 A No. In fact, I think the loan agreement

1 is specific to those four sites.

2 Q Now, in exchange for this loan, Scattered
3 and Chiplease have a security interest in all of the
4 trust's assets; isn't that right?

5 A Again, that's generally what I recall
6 without looking at it. But I'll take your word for
7 it.

8 Q And that security interests won't include
9 these gas rates that are at issue today if they're
10 assigned to IIT, correct?

11 A I believe so, yes.

12 Q So it's true, isn't it, Mr. Connolly,
13 that if IIT defaults on any of its loan obligations,
14 Scattered and Chiplease can foreclose on the
15 property?

16 A That may be correct, but I'd have to look
17 at the document and come to that conclusion.

18 Q You're unaware of it?

19 A Right. As I sit here today, I'm
20 unaware --

21 Q Did you negotiate the loan agreement?

22 A Yes.

23 Q Did you review it?

24 A I did.

25 Q Did you sign it?

1 A Yes.

2 Q Mr. Connolly, one of the defaults under
3 the loan agreement states that if IIT ever declares
4 bankruptcy, that's a default; isn't that right?

5 A It does state that, that's correct.

6 Q Okay. Does IIT have any plans to declare
7 bankruptcy after these contracts are assigned to it?

8 A I hope not. No disrespect. No,
9 seriously, I just -- there's no plans to do that. I
10 hope not.

11 Q Any plans to have a receiver appointed
12 after any of these contracts are assigned to IIT?

13 A Well, you know there's an existing
14 receiver in place. We're not -- no plan of
15 appointing a new one.

16 Q And you've testified IIT hasn't made any
17 draws on the loan, correct?

18 A That's right.

19 Q Now, when you were considering funding
20 sources, did you go anywhere else other than to
21 Scattered and Chiplease?

22 A No.

23 Q Okay. What would you do to assure
24 yourself, Mr. Connolly, that Scattered and Chiplease
25 could fund \$3 million?

1 A Well, certainly I've known Mr. Jahelka
2 for a lot of years, over ten years, and I trust and
3 respect him. Chiplease, I've known Mr. Greenblatt
4 for a long time, trust and respect him. And if they
5 say they can do it, I believe they can do it. And,
6 furthermore, Mr. Jahelka's testimony at his dep went
7 through item by item how they can do it.

8 Q Did you look at any financial documents
9 of Scattered and Chiplease?

10 A No.

11 Q Did you ask for any?

12 A No.

13 Q Did you look at any bank balances or
14 account statements of Chiplease or Scattered?

15 A No.

16 Q And you didn't ask for any either?

17 A No.

18 Q So you did no investigation whatsoever
19 whether or not Chiplease or Scattered could actually
20 fund \$3 million; isn't that right?

21 A Well, no. I would say that's incorrect
22 only because over the course of knowing, you know,
23 the principals for a lot of years, I think that does
24 hold some water, so it's not no investigation.

25 Q So you asked them whether they could do

1 it?

2 A Right.

3 Q And they told you yes?

4 A Yes.

5 Q What are you going to do if IIT asks for
6 money under this loan agreement and Chiplease and
7 Scattered can't provide?

8 A Well, first off, I don't think that's
9 going to be the case. I would be very surprised if
10 that was the case, and so I haven't really
11 investigated that option.

12 Q Would you sue Scattered and Chiplease for
13 breach of contract?

14 A Again, I haven't investigated that. I
15 don't know. I don't think I would sue them.

16 Q Well, it would be difficult to sue them
17 since you're the trustee of -- they are the
18 beneficiaries under the trust under which you're the
19 trustee?

20 A Sure.

21 Q If you could look at the loan agreement.
22 Well, let me just ask you, Mr. Connolly, the loan
23 agreement between IIT, Scattered, and Chiplease
24 contemplates a deposit control agreement, doesn't
25 it?

1 A Yes.

2 Q Has there been one entered into?

3 A Not yet.

4 Q Okay. How come?

5 A We're planning on finalizing that in the
6 near future. But we're working out the final
7 details of the percentage splits between the lender
8 and IIT on the net project operating revenue.

9 Q Mr. Connolly, does that mean that there
10 is no loan agreement in place as we sit here today
11 because that deposit agreement hasn't been executed?

12 A Well, no, that's not the case.

13 Q Has the loan agreement been executed?

14 A Yes.

15 MR. O'MEARA: Is the copy that's
16 submitted to the court executed?

17 MR. JORDAN: Yes.

18 MR. O'MEARA: Okay.

19 MR. JORDAN: The one submitted to you was
20 executed, too.

21 MR. O'MEARA: We apparently have an
22 unsigned copy, but that's...

23 THE COURT: That was Exhibit 1, wasn't
24 it?

25 MR. JORDAN: I think the trust agreement

1 was Exhibit 1. The one that I e-mailed to Mr.
2 O'Meara is the same one as the one that's here. And
3 there's a --

4 THE COURT: This copy is executed.

5 MR. O'MEARA: Okay.

6 MR. JORDAN: 50 and 52.

7 BY MR. O'MEARA:

8 Q Now, Mr. Connolly, you testified as to
9 what your plans are for each facility. It's true,
10 isn't it, that --

11 THE COURT: Excuse me. I was looking at
12 the wrong document. What --

13 MR. JORDAN: 50.

14 THE COURT: 50?

15 MR. JORDAN: 50 and 52, the amended
16 promissory note. We actually have already looked at
17 this. It's the amended promissory note, which is
18 signed on the fourth page, and the amended loan and
19 security agreement, which is signed on the 15th
20 page, I believe. No, 14th page.

21 THE COURT: Okay. Well, the note is
22 signed. But the note doesn't impose any obligation
23 to make payments, does it?

24 MR. JORDAN: Yes, it does. It's a note.

25 THE COURT: That doesn't impose any

1 obligation on the payor under this note to make a
2 payment. This is all about repayment.

3 MR. JORDAN: No. The amended loan and
4 security agreement --

5 THE COURT: That's what I was going to
6 say. So this --

7 MR. JORDAN: It's 52.

8 THE COURT: 50 is not the relevant
9 document.

10 MR. JORDAN: Right. No. He had asked if
11 50 and 52 were signed, and I just indicated they
12 aren't. That be page 1 over to page 2.

13 MR. O'MEARA: Okay.

14 THE COURT: Okay. So that is a signed
15 copy of the security agreement.

16 BY MR. O'MEARA:

17 Q Mr. Connolly, if IIT gets this permit and
18 installs a gas-to-energy facility or completes it
19 with the engines at the Sangamon landfill, ITT will
20 need a Title V permit from the IEPA to operate
21 there, won't they?

22 A No. The Title V permit is existing. We
23 won't need that. We just need the construction
24 permit to cover the two Jenbacher engines in lieu of
25 the Cat engines.

1 Q You won't need a Title V Clean Air Act
2 Permit to operate at the Sangamon facility?

3 A The answer is, yes, we'll need one and,
4 yes, we have.

5 Q I was just asking you whether you would
6 need one.

7 A You need one.

8 Q Okay. Now, RTC has a current permit at
9 the Sangamon facility, correct?

10 A Correct.

11 Q And that came up for expiration and
12 needed to be renewed; isn't that right?

13 A Yes. And I want to answer further your
14 last question. Again, the CAAPP permit is not
15 required -- you know, a final issued CAAPP permit is
16 not required to operate. Otherwise, you know, for
17 example, if General Motors wanted to come in and
18 build an auto plant here, they would have to wait
19 four years to be able to produce automobiles. They
20 would get a construction permit and an operating
21 permit and file for their CAAPP umbrella permit at
22 the same time and get the permit shield. Hence,
23 same thing in that scenario with IIT if IIT had to
24 go that route.

25 So the issuance -- the final

1 issuance of the CAAPP permit doesn't preclude you
2 from operating under a construction permit and an
3 operating permit.

4 Q Well, you operate at the risk that the
5 IEPA will deny the ultimate permit, though, don't
6 you?

7 A I don't know if that's the case.

8 Q Well, under the scenario that you've
9 testified about, you can apply for a construction
10 permit, you'll construct something --

11 A Right.

12 Q -- you'll install something, you'll
13 operate something, and then you'll apply for a
14 permit, and you'll see if IEPA grants it, which
15 could take a couple of years, correct?

16 A Yeah. I'd have to look at the
17 regulations, but I don't -- and I never experienced
18 this either. If you've got an approved construction
19 permit and you went through the test and got the
20 operating permit, I don't know if there's any avenue
21 for IEPA, or any agency for that matter, to deny the
22 umbrella permit that covers the approved permits
23 that are subsets of it.

24 Q Well, isn't it possible that you wouldn't
25 get the -- you could get a construction permit but

1 not the operating permit?

2 A Possible, but very unlikely.

3 Q Now, has the RTC Title V permit at
4 Sangamon been renewed?

5 A Yes.

6 Q Okay. Has the EIPA --

7 A I'm sorry. To be clear, we submitted the
8 renewal application which gives us the permit shield
9 until such time as finally acted upon.

10 Q And who submitted the renewal?

11 A I did.

12 Q You did. Okay.

13 A I'm sorry. Let me back up. Mr.
14 Henderson did as receiver. He submitted that.

15 Q And you were working in conjunction with
16 Mr. Henderson?

17 A Right, I did.

18 Q And have you received a determination
19 from IEPA regarding the status of that renewal?

20 A Yes.

21 Q They've issued a termination of the
22 renewal?

23 A No, no, no. They issued a completeness
24 determination of the renewal saying that the renewal
25 is complete and it's -- you know, continues its

1 review.

2 Q So that just means the form is complete.
3 It doesn't mean that the permit has been renewed,
4 though?

5 A No.

6 Q Okay.

7 A And, furthermore, I think they're at
8 three or four years to finally issue those. So it's
9 going to be a while.

10 Q Now, if RTC is granted that permit
11 renewal, is it going to then assign it to IIT?

12 A No. That's not how it works.

13 Q How does it work?

14 A IIT can -- you know, effectively, this
15 assumption will then have the ability to go in and
16 transfer under an administrative permit mod the RTC
17 CAAPP permit to IIT, similar to what I've done at
18 the other sites that have already been approved by
19 this court as far as the contracts going over to
20 IIT.

21 Q So it would be an administrative transfer
22 from RTC to IIT?

23 A That's correct, an administrative permit
24 modification.

25 Q Does that need IEPA approval?

1 A Ultimately it does, sure.

2 Q Okay. Have you talked to the IEPA and
3 asked them whether they were likely to grant such a
4 transfer or not?

5 A I have not personally talked to them, no.

6 Q Has anybody talked to them?

7 A I had our consultant give a call just to
8 see what the status was, and it was just on
9 somebody's desk under review. They didn't know what
10 the time line was going to be.

11 Q What are you talking about? Related to
12 Sangamon or related to --

13 A Related to Sangamon -- no, not related to
14 Sangamon. Related to the Taylor Ridge facility.

15 Q So if the IEPA denies IIT's transfer
16 application for the permits at Taylor Ridge -- and
17 what was the other site? Ottawa?

18 A Right.

19 Q That change your perspective about
20 whether it's likely to grant it at Sangamon?

21 A I suppose it would, but I don't expect
22 that to be the case. I haven't heard anything to
23 that knowledge.

24 Q So what would you do in that situation
25 where the permit was denied, either the renewal was

1 denied or a transfer --

2 A Well, first off, you know, this is going
3 out of order of what normally happens. You know, if
4 that happens, there's a draft denial letter that
5 comes out, and the agency by code is required to
6 tell you why they're denying it. And then you have
7 X amount of time, it's either 15 or 30 days, maybe
8 it's 60 days, to respond and give them additional
9 information, and then they can make a final
10 determination. If they make a final determination
11 to deny it, then you have appeal rights to the
12 Illinois Pollution Control Board. And then that
13 takes a period of time. And then outside of that,
14 you can appeal to a court, so...

15 Q Now, Mr. Connolly, RTC previously
16 operated a landfill gas-to-energy facility at the
17 Sangamon landfill?

18 A That's correct.

19 Q Which is also referred to as Springfield
20 landfill, correct?

21 A Sure.

22 Q Okay. And RTC's equipment there
23 consisted of several turbine engines?

24 A No, that's not correct.

25 Q What kind of engines?

1 A They were reciprocating engines. And, of
2 course, we had the well field, gas wells, header
3 piping, gas bulk, compressors, electrical
4 infrastructure, all the switchgear, everything that
5 surrounds those engines. That's the entire
6 facility. We had all of that.

7 Q Okay. How many engines were at the site?

8 A Five.

9 Q Now, were those engines in that gas
10 collection system permitted with the IEPA?

11 A Yes.

12 Q And that's pursuant to that Title V
13 permit we just talked about?

14 A Well, yes and no. I mean, they were
15 permitted back in the mid '90s before Title V was
16 around for that site, so...

17 Q But the Title V permit also covered those
18 engines and --

19 A Well, yeah. I mean, the process is the
20 same. We had a construction permit, an operating
21 permit --

22 Q I'm just asking you whether the engines
23 and the well field were --

24 A Oh.

25 Q -- covered by the Title V permit.

1 A I'm not trying to be difficult, but
2 you're talking about a 12-year period of time.
3 There's a period of time that Title V didn't cover
4 that site. That's what I'm trying to be clear on.
5 Ultimately when it became --

6 Q How about from 2002 forward?

7 A Yes.

8 Q Okay.

9 A That's fine. I'm sorry.

10 Q Now, Mr. Connolly, it's true -- let me
11 back up. You said there were five engines at that
12 site?

13 A Right.

14 Q How many engines operated? What was the
15 greatest amount of engines or how many engines
16 operated at its speak?

17 A For a while I believe we operated three.

18 Q Okay.

19 A But that was a short time.

20 Q How many engines typically operated?
21 Just one?

22 A One to two.

23 Q Okay. Now, Mr. Connolly, those engines
24 were inoperable for significant periods of time in
25 2004 and 2005; isn't that right?

1 A 2005, that's correct. In 2004, there was
2 some inoperable time. I don't recall, you know, how
3 much time.

4 Q Well, weren't the engines at Sangamon
5 inoperable between July 1st, 2004, and December
6 29th, 2004?

7 A I don't remember.

8 MR. O'MEARA: Your Honor, I've got all
9 Allied exhibit references --

10 THE COURT: That's fine. I have them
11 here.

12 MR. O'MEARA: Okay. Allied Exhibit 16.

13 THE COURT: Well, my only thought was
14 that if you've already identified an exhibit as an
15 IIT exhibit, we might as well continue to use it.

16 MR. O'MEARA: Right. It just may not
17 have the -- my outline is not updated. If we
18 could...

19 BY MR. O'MEARA:

20 Q Well, Mr. Connolly, do you recognize
21 this?

22 A Yes.

23 Q And what is it?

24 A It's a semiannual monitoring report dated
25 February 28th, 2005, to IEPA.

1 Q Is this signed by you?

2 A I'm presuming so, yes. Yes.

3 Q What's the purpose of this report?

4 A This is -- it's reporting monitoring
5 activities for a six-month period pursuant to the
6 permit requirements to report, and so it reports
7 various monitoring parameters for the facility.

8 Q Now, if we go to the second page under
9 numeral -- number 2, rather, engine operating hours,
10 you'll see the bullet point in the middle. Does
11 that refresh your recollection whether or not the
12 engines were down for a significant amount of time
13 in 2004?

14 A Yes.

15 Q Were they, in fact, down between
16 July 1st, 2004, and December 29th, 2004?

17 A That's correct.

18 Q Now, RTC's failure to operate the engines
19 at that time caused surface methane levels to reach
20 above 500 parts per million; isn't that right?

21 A I'd have to look at this report. It may
22 have. I don't remember.

23 Q Take a look at page 3 and let me know if
24 that refreshes your recollection, the first
25 paragraph.

1 A Okay. I see that.

2 Q So it's correct, isn't it, Mr. Connolly,
3 that RTC's failure to operate those engines causes
4 surface methane levels to reach above the 500 parts
5 per million level?

6 A It could have been a cause, but I'm
7 looking at this and I recall the issue now. There
8 was a grate that was the responsibility of the
9 landfill owner to seal up, and it wasn't sealed.
10 And so our position was that was a landfill issue
11 they had to fix. The other one may have been us if
12 that was a gas well. But you can also say -- LW 3,
13 and there's a grate there, that's a landfill
14 feature. And then I think we -- it was -- the well
15 was fixed, and so it's not a potential violation if
16 you fix it on the remonitoring, if you look in the
17 third paragraph. And the grate continued on. So,
18 you know, was it the engines? Can't inclusively say
19 that.

20 Q So the engines being down for
21 five-and-a-half months wouldn't cause surface
22 emissions of methane?

23 A It would, it's just a question of
24 concentration.

25 Q Okay.

1 A You have to be over 500 parts per
2 million. And certainly with no landfill cap,
3 there's a lot of areas for that gas to go out, and
4 so it may disburse it enough to keep it under that
5 concentration.

6 Q Were there positive pressures experienced
7 as a result of the engines being down for
8 five-and-a-half months?

9 A Likely, but I don't remember.

10 Q And would those have been the result of
11 the engines being down?

12 A Yes.

13 MR. O'MEARA: Let's look at Exhibit 15,
14 if we could, Your Honor. Your Honor, there's not a
15 page number here, but we'll go to page 1206.

16 BY MR. O'MEARA:

17 Q Do you recognize this document, Mr.
18 Connolly?

19 A Generally, yeah, sure.

20 Q Okay. If I can direct your attention
21 to -- I think it's in the form in the middle of the
22 page, it looks like it's number 26, "Describe the
23 suspected or known cause of the incident." Do you
24 see that?

25 A Yes.

1 Q So does that refresh your recollection
2 that you believe that RTC -- excuse me. Does that
3 refresh your recollection that the positive
4 pressures of the wellheads were a result of the
5 engines being down?

6 A Well, yeah. I just testified that that's
7 the case.

8 Q Okay.

9 A Yeah.

10 Q Now, did RTC received any NOV's as a
11 result of these engines being down?

12 A I believe so, yes.

13 Q Okay. Do you know how many?

14 A I don't remember.

15 MR. O'MEARA: If we could look at
16 Exhibit 14, Your Honor.

17 BY MR. O'MEARA:

18 Q Do you recognize this document, Mr.
19 Connolly?

20 A Yes.

21 Q And is this a copy of an NOV from the
22 IEPA to RTC for its operations at the Sangamon
23 landfill?

24 MR. JORDAN: Objection to this, Your
25 Honor. This is a hearsay document. He would have

1 to have somebody from the compliance section, Ms.
2 Armitage, to set a foundation for this document.

3 THE COURT: It's not being introduced for
4 the truth of the matter asserted. It's being
5 introduced to indicate that notice was received.

6 THE WITNESS: Yeah, I mean, I generally
7 recall this. I mean, I'll note it's almost four
8 years ago, but...

9 BY MR. O'MEARA:

10 Q And was this for violations that the IEPA
11 alleged relating to the gas collection and control
12 system?

13 A I don't remember. I'd have to look at it
14 again.

15 MR. O'MEARA: And just scroll to the
16 second page, if we could, Your Honor. Third page.

17 MR. JORDAN: Your Honor, we -- Your
18 Honor, we object to introduction of allegations. I
19 mean, Mr. Connolly has already testified regarding
20 matters generally. But introduction of allegations
21 as some sort of character evidence is improper. He
22 has to have an actual finding.

23 MR. O'MEARA: Your Honor, you had
24 addressed this issue well before the trial when we
25 had -- we briefed this issue of the scope of the

1 evidence.

2 THE COURT: The question pending is
3 whether the allegations in this notice had to do
4 with the operation of the Sangamon landfill. My
5 expectation is I can read the document and come to
6 that conclusion myself. If you think it's something
7 that I need Mr. Connolly's help in understanding, I
8 would be happy to let you answer the question --
9 have the question answered.

10 MR. O'MEARA: We can move on to the next
11 one, Your Honor, because there is going to be
12 several.

13 THE COURT: Well, if they are of the same
14 nature with the content of the exhibit being
15 understandable on its face, then I would urge you to
16 skip it and simply advert to the exhibits in
17 argument.

18 MR. O'MEARA: Okay. So -- all right.
19 I'll continue with the examination. I don't know
20 how many exhibits then we'll need to go through,
21 but...

22 BY MR. O'MEARA:

23 Q Do you know what the result of that NOV
24 was, Mr. Connolly?

25 A I don't remember.

1 Q Does that remain open?

2 A It may. But I believe that it could be
3 the case.

4 Q You believe that's the case?

5 A I believe it is the case.

6 Q Okay. Now, following this engine being
7 down from July to December 2004, did RTC ever repair
8 that engine?

9 A Yes.

10 Q And did it get operating again?

11 A Yes.

12 Q And when was that?

13 A I think we just read it. It was late
14 December 2004.

15 Q Okay. Did it go down again after that?

16 A It did.

17 Q Okay. Was that in January of 2005?

18 A Yeah. I think it was right at the end of
19 January 2005.

20 Q Approximately a month later, right?

21 A That's correct.

22 Q Okay. Now, that engine went down because
23 there was a fire in RTC's gas plant at the Sangamon
24 facility; isn't that right?

25 A Well, no. The root cause was a failed

1 rod that hit a gas line that caused a localized, you
2 know, spark and fire around that single engine,
3 that's correct.

4 Q But it destroyed the engine?

5 A That engine, yes.

6 Q The mechanical failure destroyed that
7 engine; isn't that right?

8 A Right.

9 Q Were any of the other engines operational
10 at that time?

11 A We were -- no. The answer is no.

12 Q Okay. Now, RTC never repaired that
13 engine, did it?

14 A No.

15 Q RTC never repaired any of the other
16 engines at Sangamon, did they?

17 A No. And, again, as we talked about in
18 the dep, I mean, I was informed at this point in
19 time, between 2004 -- early in 2004 to the end of
20 2005 by Mr. McDonald and Mr. Bent, that this system
21 was going to -- the collection system was going to
22 be ripped out in its entirety on the landfill and --
23 which meant all the wells and all the header pipe
24 were going to be gone between the fall of 2004 and
25 the end of 2005. In fact, they took out some of

1 system in the fall of 2004.

2 So the reason for that -- in my
3 consultation with the Chapter 11 trustee, we came to
4 the conclusion there wasn't going to be enough gas
5 during the rip-out to even run a single engine. We
6 came to that final conclusion and decided it wasn't
7 worth doing.

8 Q So the answer to my question is, no, the
9 engine was never repaired, right?

10 A Right. Sorry.

11 Q Okay. Now, isn't it true that the
12 engines are no longer present at the site?

13 A That's correct.

14 Q Is that because RTC sold those engines?

15 A Yeah, RTC sold the engines themselves.
16 Again, all of the infrastructure is still there.
17 The compressors are still there, the switchgear,
18 exhaust stacks. All the electrical infrastructure
19 is there.

20 Q And when did RTC sell and remove those
21 engines from the landfill?

22 A Fall of 2006.

23 Q Now, Mr. Connolly, isn't it true that at
24 the time the engine went down in January of 2005,
25 RTC was operating under a permit that required

1 engines not to shut down for longer than one hour?

2 A That's correct.

3 Q And that's the Title V permit, correct?

4 A Yeah. You call it Title V, I call it
5 CAAPP. But that's fine.

6 Q CAAPP permit.

7 It's the CAAPP permit that requires
8 that engines not be shut down for longer than one
9 hour; isn't that right?

10 A Well, it just says that combustion
11 shouldn't be down for more than one hour.

12 Q So the fact that they were down and never
13 repaired, is that a violation of the CAAPP permit?

14 A It's an alleged violation. Again, you
15 know, as we talked about in the dep, it's not a
16 violation until it goes all the way through the
17 process.

18 Q Were there other environmental problems
19 associated with that engine being permanently shut
20 down at the Sangamon landfill?

21 A Well, I think we've talked about, you
22 know, the fact that it did cause some positive
23 pressures in the wells.

24 Q Anything else?

25 A No.

1 Q Now, in addition to the NOV at Sangamon
2 that we just talked about in August of 2004, RTC
3 received other NOV's at that site; isn't that right?

4 A I don't remember.

5 MR. O'MEARA: Let's look at Allied
6 Exhibit 11.

7 THE COURT: I've got an 11.5.

8 MR. O'MEARA: I think it's just 11, Your
9 Honor.

10 THE COURT: You do have an 11.5, but
11 that's not what you want me to pull up right now.

12 MR. O'MEARA: Correct.

13 THE COURT: Okay.

14 MR. JORDAN: Your Honor, we object to
15 this document as well. It's a hearsay document.
16 There is no foundation for it.

17 THE COURT: Okay. Again --

18 MR. JORDAN: He's offering now for the
19 truth of the matter asserted according to --

20 THE COURT: I don't perceive that. I
21 think, once again, the question is whether there was
22 a notice received. And if there's an attempt to
23 introduce this for the truth of the matter asserted,
24 I'll sustain your objection. But I don't take that
25 to be the thrust of this question.

1 MR. JORDAN: What's the -- then it's
2 irrelevant, Your Honor. It's not for the matter
3 asserted as being true.

4 THE WITNESS: If Your Honor could scroll
5 down through it so I could look at it, please.
6 Okay.

7 Could you repeat your question?
8 Sorry.

9 BY MR. O'MEARA:

10 Q Do you recall receiving another NOV in
11 June 2002 --

12 A I generally recall this. I generally
13 recall this one.

14 Q Okay. And do you know what the end
15 result of this NOV was, Mr. Connolly?

16 A Yeah. We filed the appropriate
17 documentation and permit application I think it
18 referenced in there, and I believe it was resolved.

19 Q Okay. You believe this was resolved or
20 does --

21 A Yes.

22 Q -- it remain outstanding to --

23 A No. I think --

24 Q -- this day?

25 A I think that we resolved this.

1 Q Mr. Connolly, do you remember testifying
2 at your deposition at the end of January?

3 A Yes.

4 Q Do you recall me asking you about this
5 NOV?

6 A I can't tell you this particular
7 June 12th, 2002, NOV. I just can't recall that
8 particular one.

9 Q Would you like to look at your
10 deposition?

11 A I would. I would, please.

12 MR. O'MEARA: Your Honor, I've got a copy
13 for the witness, although I think you also have a
14 copy.

15 THE COURT: As I was just discussing a
16 while ago with Mr. Jordan, given that Mr. Connolly
17 is the representative of a party in this case, you
18 are free to ask him about any statement that he's
19 made. It's a party admission. You can read it into
20 the record as long as there's no dispute about its
21 authenticity. I'll be happy to hear it. You don't
22 need to go through impeachment by prior inconsistent
23 statement.

24 MR. O'MEARA: Okay. Thank you, Your
25 Honor.

1 THE WITNESS: Could I ask Your Honor to
2 go to the last page again? I didn't get a chance to
3 read all of that.

4 THE COURT: Yes.

5 THE WITNESS: Thank you.

6 THE COURT: Do you want that page 3, Mr.
7 Connolly?

8 THE WITNESS: Yes, sir. I just wanted to
9 get down to the end part there.

10 THE COURT: About the recommendation?

11 THE WITNESS: Please, yeah. Thanks.

12 Okay.

13 BY MR. O'MEARA:

14 Q Now, Mr. Connolly, do you recall me
15 asking -- and I'm at page 269 of your deposition
16 from January 28th -- excuse me, January 29th, 2008.

17 "Regarding the June 2002 NOV, I
18 notice in the re line it's got violation notice
19 A2002-00155. Is that typically how you track that
20 NOV, based on its number?

21 "Sure." That was your answer?

22 A Yes.

23 Q And then I asked you, "This one to your
24 knowledge remains outstanding?

25 You answer was "right"?

1 A Right.

2 Q So --

3 A Yeah. And as I've read the bottom of
4 that page 3, it refreshes my recollection.

5 Q Okay. So this NOV remains outstanding?

6 A I believe so. The only caveat to that,
7 it may be rolled into the other one we just looked
8 at.

9 Q Now, on or about February 2005, Mr. Harry
10 Henderson started taking responsibility for
11 communicating with the IEPA at RTC's Sangamon site;
12 isn't that right?

13 A What date was that again?

14 Q February of 2005.

15 A No, sir.

16 Q Excuse me. In or around 2005. At some
17 point in 2005?

18 A Right.

19 Q Okay. And you worked with Mr. Henderson
20 to coordinate communicating with the IEPA regarding
21 the permitting issues at that site, right?

22 A Yes.

23 Q If Harry Henderson received NOVs from the
24 State of Illinois at that site, would he share them
25 with you?

1 A Well, I think we went over this at my
2 dep. He personally didn't receive them. I think
3 counsel for him received them.

4 Q So his counsel would receive them and
5 share them with you?

6 A Right.

7 Q And then you would assist in responding
8 to them?

9 A Right. To the extent that he received
10 them, right.

11 Q Okay. Did RTC through Mr. Henderson
12 receive another NOV in February of 2006?

13 A I don't remember. Maybe you can show it
14 to me.

15 Q Yeah.

16 MR. O'MEARA: Let's look at Exhibit 19.

17 MR. JORDAN: I would object on hearsay
18 grounds and relevance, Your Honor.

19 THE COURT: Same ruling that I made in
20 the past.

21 THE WITNESS: Okay.

22 BY MR. O'MEARA:

23 Q Do you recall this NOV?

24 A I do.

25 Q And this NOV is related to RTC's gas

1 collection and control system at the site?

2 A It is.

3 Q Is it related to the gas collection or --
4 excuse me, the engines being down? Is that part of
5 it?

6 A Could be. I'd have to look at which
7 section --

8 Q Look at number 1.

9 A Yes.

10 Q So the engines were the control device at
11 that facility?

12 A In February 2006, they were not.

13 Q What was?

14 A There was a utility flare.

15 Q Was that a utility flare that Allied had
16 to install because your engines weren't operating?

17 A Well, it was a utility flare that Allied
18 installed with the agreement with the receiver and a
19 court order allowing that to happen.

20 Q And that was because RTC's engines
21 weren't operating since January of 2005; isn't that
22 right?

23 A That in conjunction with the fact there
24 wasn't enough gas to run one of those engines
25 because of the overheight removal.

1 Q RTC didn't get a flare at the site,
2 though?

3 A No.

4 Q What's the status of this NOV?

5 A I believe this one was withdrawn. And
6 because -- there was a response to that because it
7 was directed to the wrong party. Scattered
8 Corporation was not a party to this site. And the
9 receiver's counsel sent a response to the agency on
10 this showing them the court order that the receiver,
11 Harry Henderson, was the proper party that had the
12 authority under that state court order to oversee
13 permits and licenses and hold those things. So they
14 withdrew that.

15 Q Did they reissue another one?

16 A Yes.

17 MR. JORDAN: Your Honor, I would object
18 to that. I don't know what the relevance of all
19 this is. And he's trying to backdoor --

20 THE COURT: Wait. What's the basis for
21 the objection? Relevance?

22 MR. JORDAN: Relevance --

23 THE COURT: It's overruled.

24 MR. JORDAN: -- and hearsay --

25 THE COURT: It's overruled.

1 MR. JORDAN: -- document he's trying to
2 backdoor in for the truth of the matter asserted.

3 BY MR. O'MEARA:

4 Q You testified that they issued another
5 NOV; isn't that right, Mr. Connolly?

6 A I recall that's the case, yes.

7 Q Okay. Exhibit 24.

8 MR. JORDAN: Same objections, Your Honor.

9 THE COURT: Same rulings.

10 THE WITNESS: Okay.

11 BY MR. O'MEARA:

12 Q Is that an NOV that was received relating
13 to RTC's gas collection and control system at the
14 Sangamon facility?

15 A Generally, yes.

16 Q Okay. Did you respond to this with
17 Mr. -- on behalf of or in conjunction with
18 Mr. Henderson?

19 A Yes.

20 Q And do you know what the response was?

21 A I know we did it. I'd have to look at
22 it.

23 Q Would you have responded with a
24 compliance commitment agreement? Was that your
25 typical practice?

1 A Yes.

2 Q Okay. Do you know whether that was
3 accepted or rejected by IEPA?

4 A I don't remember. I'd have to look at
5 it.

6 Q Do you know if this NOV remains open?

7 MR. JORDAN: Your Honor, I object. Now
8 he -- that's a substantive question regarding --

9 THE COURT: No. It's very -- it's a
10 question about the status of a complaint against the
11 landfill gas collection and conversion system as to
12 which there is sought to be an assumption and
13 assignment. I don't see any problem with asking
14 whether an administrative complaint that's been
15 issued against that operation is still outstanding.

16 Do you know if it's still
17 outstanding?

18 THE WITNESS: It would help me to see --
19 if I could answer the prior question to answer this
20 question.

21 THE COURT: If you don't know, just say
22 you don't know.

23 THE WITNESS: I'm sorry. I don't know at
24 this time.

25 MR. O'MEARA: Okay.

1 BY MR. O'MEARA:

2 Q Mr. Connolly, do you know whether or not
3 any of these NOV's issued that we've discussed today,
4 or any others that we may not have, did you ever
5 receive a notice from the IEPA that they were
6 referring any of these matters to legal action?

7 A There was a notice of intent to refer to
8 legal action, notice of intent to pursue legal
9 action. It doesn't state that they're absolutely
10 referring.

11 Q Okay.

12 A So, I mean, that's the answer to your
13 question.

14 Q The answer is, yes, you have received
15 notices like that from IEPA?

16 A A notice of intent to pursue legal
17 action, yes.

18 Q Now, Mr. Connolly, as part of your duties
19 and responsibilities while employed at RTC, you
20 received and responded to NOV's at other sites, not
21 just Sangamon; isn't that right?

22 A Yes.

23 Q Okay. RTC operated a gas-to-energy
24 facility at the Hillside landfill, didn't it?

25 A Yes.

1 Q And they had a permit to operate there
2 from IEPA as well?

3 A Yes.

4 Q Now, isn't it true that RTC received an
5 NOV from the IEPA related to its operation of the
6 gas collection and control facility at Hillside?

7 A Yes.

8 Q Okay. Take a look at Exhibit 26, if you
9 will, and let me know if that's a copy of the NOV.

10 A I believe that's the case, yeah.

11 Q And that was related to RTC's operation
12 of the gas collection and control system at Hillside
13 landfill?

14 A I'm looking at that. It's starting off
15 about analyzing sulfur and nitrogen content of
16 landfill gas.

17 Q Well, was RTC operating anything other
18 than a gas collection and control system on it?

19 A No, no, no.

20 Q Okay.

21 A I think the general answer to your
22 question is yes.

23 Q Did you prepare a response to this NOV?

24 A I did, yes.

25 Q Okay. What was your response?

1 A My response was that I was working with
2 the new trustee, Mr. Steinberg, and his
3 environmental engineering firm to establish a
4 response and that, you know, we would be responding
5 shortly.

6 Q Did you ever submit a compliance
7 commitment agreement?

8 A I don't believe I did, no.

9 Q Okay. Did somebody?

10 A Yes.

11 Q Who was that?

12 A Environ did that on behalf of Jay
13 Steinberg.

14 Q Do you know the end result of that
15 compliance commitment agreement? Was it accepted by
16 the IEPA?

17 A I don't know.

18 MR. O'MEARA: Let's look at Allied
19 Exhibit 27, if we could, Your Honor.

20 MR. JORDAN: Your Honor, I object to the
21 relevance. If Mr. Connolly -- if the theory is that
22 somehow Mr. Connolly is bad because --

23 THE COURT: What's the objection?

24 MR. JORDAN: Relevance.

25 THE COURT: The objection is overruled.

1 BY MR. O'MEARA:

2 Q Have you seen this document, Mr.
3 Connolly?

4 A You showed it to me at my deposition,
5 but --

6 MR. JORDAN: Oh, and hearsay, Your Honor,
7 also.

8 THE WITNESS: You showed it in my dep,
9 but I don't believe I saw it prior to that.

10 MR. O'MEARA: Okay.

11 BY MR. O'MEARA:

12 Q It appears, though, that the IEPA
13 rejected the compliance commitment agreement --

14 THE COURT: That would be -- well, if
15 this document is in evidence, if it's not being
16 objected to on the basis that it's inauthentic, I'll
17 draw my own conclusion from --

18 MR. JORDAN: We did object on those
19 grounds, Your Honor.

20 THE COURT: You have an authenticity
21 objection to this?

22 MR. JORDAN: Hearsay objection and a
23 relevance objection.

24 THE COURT: If there's a question about
25 the authenticity of the document, you would need to

1 have some foundation laid that this is, in fact, a
2 record of a document received, maintained in the
3 ordinary course, or issued by the IEPA.

4 MR. O'MEARA: I don't think there is any
5 reasonable objection that this has got an
6 authenticity problem. It's on IEPA letterhead.
7 It's signed by IEPA and --

8 THE COURT: Well, that's what it says.

9 MR. O'MEARA: Right.

10 THE COURT: But I have no way of knowing
11 whether this was fabricated or not.

12 MR. O'MEARA: Okay. Well --

13 THE COURT: It's not hard to copy a
14 letterhead on a scanner and put it onto another
15 sheet of paper.

16 BY MR. O'MEARA:

17 Q Mr. Connolly, did you regularly receive
18 correspondence of this type --

19 THE COURT: So the point that I'm going
20 to make is that pending some foundation being
21 laid -- now, this requires, though, that you have a
22 good faith basis for doubting the authenticity of
23 this document.

24 MR. JORDAN: The only thing I don't know
25 is it's not addressed to any of my clients. It's

1 addressed to Mr. Steinberg by somebody who is not my
2 client. You know, I have no reason to doubt Mr.
3 O'Meara got this in discovery. And we may even have
4 produced it. I just don't know anything about it.
5 And I don't know how you can ask Mr. Connolly
6 questions about a document that is not addressed to
7 him, not kept by him. It seems to me that
8 Mr. Steinberg, at the very least, would have to
9 testify, or Ms. Armitage. But I don't know that I
10 question the authenticity of it. I just don't know
11 how you can question Mr. Connolly about it.

12 MR. O'MEARA: That's fine, Your Honor.

13 We can move on.

14 THE COURT: All right.

15 BY MR. O'MEARA:

16 Q Mr. Connolly, did RTC operate the Taylor
17 Ridge landfill?

18 A It operated the gas system on the
19 landfill. It didn't operate the landfill itself.

20 Q Oh, I'm sorry. They operated the gas
21 collection and control system at the Taylor Ridge
22 landfill in Illinois; isn't that right?

23 A Right.

24 Q Okay. And they had a permit to operate
25 there, too?

1 A Yes.

2 Q Okay. Did RTC ever receive any NOV's
3 related to its operation of the gas collection and
4 control system at Taylor Ridge?

5 A It did. As I recall, it came in to the
6 trustee, yeah.

7 MR. O'MEARA: Let's look at Exhibit 29,
8 Your Honor.

9 MR. JORDAN: Same objections, Your Honor,
10 for the record.

11 THE COURT: Yes.

12 MR. JORDAN: Hearsay and --

13 THE COURT: Let's have an understanding
14 that you've got a standing objection to all of the
15 correspondence from the IEPA in the nature of
16 violation notices and that I will overrule those
17 objections --

18 MR. JORDAN: All right.

19 THE COURT: -- based on the colloquy that
20 we've already had.

21 MR. JORDAN: I appreciate that. I'm just
22 trying to do my job.

23 BY MR. O'MEARA:

24 Q Have you seen Exhibit 29 before, Mr.
25 Connolly?

1 A You'll note it's a few years old.

2 If I could ask Your Honor to scroll
3 through it, please.

4 Okay. I've seen this, yes.

5 Q Okay. Is this is a violation notice for
6 the failure to submit the annual compliance
7 certification?

8 A That is correct. They went out to
9 several sources, as I understood, that year.

10 Q Okay. Did you get any --

11 A Not just us.

12 Q Were there any other RTC NOVs received at
13 the Taylor Ridge landfill?

14 A I recall one that was received by the
15 trustee.

16 Q By the trustee?

17 A Yeah. And I'll note on this one, this
18 one was resolved.

19 MR. O'MEARA: Let's look at Allied
20 Exhibit 30, if we could, Your Honor.

21 BY MR. O'MEARA:

22 Q Is this the other NOV you're referring
23 to?

24 A Yes.

25 Q And you believe this one to be to the

1 trustee and not to you?

2 A Correct.

3 Q And why do you think that?

4 A I recall getting a phone call from Mr.
5 Szilagyi stating that he had received this.

6 Q Did he ask you for your help in
7 responding to this?

8 A Yes.

9 Q Okay. And was this for violations
10 related to the -- let me back up. Is this NOV
11 related to RTC's operation of the gas collection and
12 control system at the Taylor Ridge landfill?

13 A It is, yeah. It's as I talked about
14 earlier. We had the overheight situation there, and
15 it was a difficult situation to comply with, given
16 the overheight.

17 Q And you responded to this NOV with a
18 compliance commitment agreement?

19 A Yes.

20 Q Was it accepted by IEPA?

21 A I'd have to look. I don't remember.

22 Q Well, if you look at Exhibit 31, Allied
23 Exhibit 31. Does this refresh your memory whether
24 or not your compliance commitment agreement was
25 accepted by IEPA?

1 A Can you tell me the date of this letter
2 again?

3 Q September 27th, 2005. Let me see if I
4 can make it easier, Mr. Connolly.

5 A What I'm struggling with is the big gap
6 of time here. That's what I'm struggling with.

7 Q This is a letter from the IEPA to you
8 indicating that they're giving you notice of intent
9 to pursue legal action; isn't that right?

10 A Right. But I'm looking at the time line.
11 That was September 27th of '05. That's when the
12 Chapter 7 trustee was appointed, and I don't know if
13 I received this. Is there anything at the top of
14 this letter, any indication? No.

15 Q My question to you is just whether or not
16 your CCA was accepted or rejected by the IEPA. This
17 seems to indicate that it was rejected.

18 THE COURT: Okay. I think it would be
19 helpful to me if you gave me some indication of the
20 relationship between the notice of violation, a
21 compliance commitment agreement, and a notice of
22 intent to pursue legal action.

23 MR. O'MEARA: Okay.

24 BY MR. O'MEARA:

25 Q Mr. Connolly, if the IEPA issues a notice

1 of violation, the person or entity to whom it's
2 issued has the ability to respond, does it not?

3 A That's correct.

4 Q And the person to whom -- the person or
5 entity to whom it's issued can either request a
6 meeting with the IEPA to discuss the violation
7 notice, right?

8 A That's correct.

9 Q Or it can respond in writing to the
10 violations alleged, correct?

11 A That's incorrect.

12 Q Why is that incorrect?

13 A You can do both.

14 Q Okay.

15 A It's not an or condition.

16 Q Understood.

17 Now, if you respond to the IEPA in
18 writing, isn't that typically referred to as a
19 compliance commitment agreement? Or isn't that one
20 of your options in responding to the IEPA?

21 A More the latter, one of the options.

22 Q And a compliance commitment agreement
23 typically responds to the violations alleged and
24 sets forth what you're prepared to do to resolve
25 them; isn't that right?

1 A That's correct. It's item by item, and
2 it either sets forth what you're going to do to
3 resolve them or you outline why you disagree with
4 the agency's allegation.

5 Q And once the agency receives a compliance
6 commitment agreement like that, it basically -- it
7 can either accept it or reject it; isn't that right?

8 A That's correct.

9 Q Okay. And then following the rejection,
10 I believe the agency still has two choices. It
11 could just die right there, or they can give
12 indication that they're going to refer you to legal
13 action; isn't that right?

14 A No, I don't think that's right.

15 Q So what happens then after a compliance
16 commitment agreement is rejected?

17 A I'd have to look at the regulations, but
18 I think there's a requirement by a date certain to
19 either issue the notice of intent to pursue legal
20 action or not.

21 Q Okay. So they either issue a notice of
22 intent to pursue legal action or they do not?

23 A That's my general understanding about it,
24 but I'd have to look at the regs again.

25 Q Mr. Connolly, did RTC operate a gas

1 collection and control system at the McCook
2 landfill?

3 A Yes.

4 Q Was that owned by American Grading?

5 A Yes.

6 Q Okay. And they have a permit to operate
7 from the IEPA at that landfill?

8 A Yes.

9 Q Okay. Did RTC ever receive a notice of
10 violation related to its operation of the gas
11 collection and control system at that site?

12 A Yes.

13 MR. O'MEARA: If we could look at
14 Exhibit 32 briefly.

15 THE COURT: We are precisely at the point
16 that I had imagined we would be. I don't think
17 there is anything gained by your going through each
18 of these documents with Mr. Connolly.

19 MR. O'MEARA: Okay.

20 THE COURT: To the extent that they're
21 not objected to with some reasonable basis as not
22 being authentic, I will accept them as what they
23 purport to be. If you want to ask Mr. Connolly
24 whether to his knowledge any notice of violation
25 remains outstanding, unresolved, I'll be happy to

1 have you do that.

2 MR. O'MEARA: Okay.

3 THE COURT: If you have a notice of
4 intent to pursue legal action, I would assume that
5 means that the matter is still outstanding.

6 MR. O'MEARA: It does. Well, then I
7 think I can skip ahead, Your Honor.

8 BY MR. O'MEARA:

9 Q Now, Mr. Connolly, we've testified, I
10 think -- or you've testified as we've gone through
11 this that RTC has had various contracts to operate
12 at various landfills; isn't that right?

13 A Sure.

14 Q Isn't it true, Mr. Connolly, that RTC has
15 been found in the past to have defaulted on gas
16 collection contracts that they've had with landfill
17 owners?

18 A You'd have to be more specific.

19 Q RTC previously had a gas collection
20 contract with gas -- excuse me, a landfill gas
21 collection contract with Connecticut Resource
22 Recovery for a landfill in Shelton, Connecticut;
23 isn't that right?

24 A Right.

25 Q And isn't it true that this court found

1 RTC to have breached that agreement?

2 A Well, I went through that trial, and we
3 certainly heard the ruling. I'm not going to opine
4 on Your Honor's ruling. But as I recall, there were
5 eight points in that, and there were a few points
6 that we were in breach in, and there were a few
7 points of something else. And I'm not going to say
8 CRA was in breach, but that may have been the case.
9 But it was, I recall, as being a very complicated
10 case, and the ruling --

11 Q Mr. Connolly, my question was isn't it
12 true that this court found RTC to have breached that
13 contract, yes or no?

14 A I recall it saying that it was properly
15 terminated. If you want to -- I don't know how you
16 connect the dots there, but maybe that's connected.
17 I recall the court ruling that the contract was
18 properly terminated.

19 Q It was properly terminated as a result of
20 a breach?

21 A My testimony is as it stands. That's
22 what I recall. That trial was six years ago.

23 MR. O'MEARA: I would show him
24 Exhibit 49, Your Honor, but I'll just let that --
25 we'll save that for argument.

1 BY MR. O'MEARA:

2 Q RTC, you've testified earlier, previously
3 had a gas collection contract with Congress
4 Development Company related to the Hillside
5 landfill; isn't that right?

6 A Right.

7 Q Okay. And isn't it true that this court
8 found that RTC breached its obligations under that
9 contract as well?

10 A I don't remember that.

11 Q Well, let's look at Exhibit 50 and see if
12 that refreshes your recollection. The first two
13 pages appear to be an interlocutory order. And if
14 we skip to the third page, it appears to be a final
15 judgment order. And I direct your attention, Mr.
16 Connolly, to number one in the final judgment order.

17 A Okay.

18 Q Do you see where it says, "Judgment in
19 the amount of \$405,000 shall be entered in favor of
20 Congress and against RTC for its breach of
21 contract"?

22 A I do see that.

23 Q So does that refresh your recollection
24 that this court found RTC to be in breach of that
25 contract?

1 A It does, yeah. I'll also note this was a
2 trial six years ago, so...

3 Q Now, RTC previously had a gas collection
4 and control contract with American Grading at the
5 McCook landfill; isn't that right?

6 A Right.

7 Q And RTC was found by this bankruptcy
8 court to have defaulted under that agreement, too;
9 isn't that right?

10 A Yeah, it was found in default. What I
11 recall is there was a \$100,000 pre-paid royalty that
12 wasn't made, you know, unfortunately by the trustee
13 at the time.

14 Q And that contract was terminated,
15 correct?

16 A Right. It's under appeal. I know that.

17 Q But it was terminated?

18 A I guess that's the terminology if it's
19 under appeal.

20 Q Now, Mr. Connolly, RTC previously had a
21 gas contract to operate a gas collection and control
22 facility at Allied's Pontiac landfill; isn't that
23 right?

24 A Right.

25 Q And isn't it true that RTC and Allied

1 entered into a stipulation whereby Allied allowed
2 RTC to assume that contract in this bankruptcy
3 court?

4 A I'm not certain of the terminology. I
5 recall there was a stipulation that was done in
6 conjunction with an agreed assumption of that
7 contract. I recall that, and that was, I believe, a
8 number of years ago, right.

9 Q Do you recall -- strike that.

10 It's true, Mr. Connolly, that that
11 stipulation identified various defaults --

12 MR. JORDAN: Objection. Your Honor, I
13 object. It's a settlement under Rule 408. And in
14 footnote 1, it indicates that the parties retain all
15 their defenses, claims, and rights. He's trying to
16 use a settlement agreement offensively and --

17 MR. O'MEARA: It's not a settlement
18 agreement, Your Honor. It's --

19 THE COURT: Here's the thought that I
20 have: I have not looked at this recently. To the
21 extent that you want to make an argument from it,
22 you can make an argument from it. I don't know that
23 you're gaining anything by asking Mr. Connolly what
24 he remembers about it.

25 MR. O'MEARA: Okay.

1 THE COURT: And if you make an argument,
2 I'll look at it and I'll draw my own conclusions as
3 to the extent to which there's any admission
4 involved. And if it is, in fact, what Mr. Jordan
5 says, simply a settlement, then I will not draw any
6 conclusions from it.

7 MR. O'MEARA: Okay.

8 BY MR. O'MEARA:

9 Q Mr. Connolly, it's true, isn't it, that
10 you've been sued by the State of Illinois
11 personally?

12 A Yes.

13 Q And that lawsuit is pending in Cook
14 County Circuit Court?

15 A It is pending. To answer further, my
16 understanding is that there's a settlement with
17 American Grading, and they're planning to dismiss
18 the case against me.

19 Q Is the lawsuit pending today as we speak?

20 A I would have to check with counsel. It
21 may or may not be.

22 Q That lawsuit is for various environmental
23 violations alleged related to RTC's operation of the
24 gas collection and control system at the McCook
25 landfill; isn't that right?

1 A Right.

2 Q Have you estimated the potential monetary
3 exposure to you if you're found liable for all of
4 the claims made by the State of Illinois in that
5 lawsuit?

6 A I don't remember.

7 Q Well, isn't it true, Mr. Connolly, that
8 you've made a claim in the Jenbacher lawsuit that's
9 pending in this court that valued your potential
10 exposure in the State of Illinois case at
11 approximately \$4 million?

12 A Well, first off, the Jenbacher lawsuit
13 was dismissed. We settled.

14 Q That wasn't my question.

15 A Right. Well, but whatever claim I put in
16 there is right. I'd have to look at it. That
17 sounds right.

18 Q So it was your estimate that it -- that
19 that State of Illinois lawsuit had a potential
20 exposure of \$4 million?

21 A That's my general recollection without
22 looking at it again.

23 Q Now, Mr. Connolly, I believe you
24 testified, and correct me if I'm wrong, that at the
25 Litchfield and Bloomington sites, IIT intends to

1 send that gas to a pipeline?

2 A Right.

3 Q Okay. Does that involve scrubbing that
4 gas to improve its quality?

5 A Yes.

6 Q Okay. Has RTC ever operated a gas
7 scrubbing pipeline project before?

8 A Yes.

9 Q And where was that?

10 A Mobile, Alabama.

11 Q Okay. And this was RTC that operated
12 that, correct?

13 A That's correct.

14 Q Okay. Has IIT ever operated a gas
15 scrubbing --

16 A No.

17 Q -- facility?

18 Now, at that Mobile landfill, did
19 RTC put gas into a pipeline?

20 A Yes.

21 Q Was it paid for that gas?

22 A No.

23 Q And is that because RTC couldn't get the
24 gas quality to meet the standards necessary for sale
25 to the pipeline?

1 A At that time, that's correct.

2 Q Okay. Now, Mr. Connolly, you ran through
3 several different agreements with Mr. Jordan related
4 to contracts IIT has entered into with various
5 service providers. I think you mentioned Altorfer,
6 LFG, etc. Do you remember those?

7 A Yes.

8 Q None of those agreements require IIT to
9 use those consultants, does it?

10 A I don't understand your question.

11 Q My question is, you're not obligated to
12 use Altorfer at Sangamon, Litchfield, Bloomington,
13 are you?

14 A No. I wouldn't use them at those sites.

15 Q You could use them, but you're not
16 obligated to; isn't that right?

17 A Well, sure, I'm not obligated to. I
18 wouldn't use them there. They're not doing work on
19 those sites.

20 Q Well, I'm talking about all those
21 contracts generally that we talked about, RS, I
22 think, Used Oil, Lozier. None of those contracts
23 obligate IIT to use any of those consultants; isn't
24 that right?

25 THE COURT: Well, let me short circuit

1 this. I took a look at those exhibits as Mr. Jordan
2 was talking to you about them, Mr. Connolly, and
3 they all seem to me to be agreements by the
4 counterparty to the contract to provide services to
5 IIT at its usual costs and charges.

6 THE WITNESS: That's correct, Your Honor.

7 THE COURT: So if you went to them
8 without that paper, I assume they would give you
9 precisely what the paper says. They'd be willing to
10 provide service for you at their usual and customary
11 charges.

12 THE WITNESS: I suppose that's the case.
13 The only --

14 THE COURT: What does the paper add? If
15 you've had a long-standing relationship with these
16 people and they trust you and they like to do
17 business with you, I suppose they would do business
18 with you on the same terms with or without those
19 agreements.

20 THE WITNESS: That's probably the case.

21 MR. O'MEARA: I don't think I have
22 anything further right now, Your Honor. I'll pass
23 the witness.

24 THE COURT: On that question of scrubbed
25 landfill gas --

1 THE WITNESS: Yes.

2 THE COURT: -- have you ever had a
3 successful operation of a sale of scrubbed gas to a
4 utility?

5 THE WITNESS: I have not. That's why
6 we're going to contract with Firm Green Fuels.
7 They're out of Ohio. They've gotten a project going
8 with the Swayco landfill, you can pull up their
9 website, in Ohio, and we're going to contract with
10 those guys. And we've got a relationship with them,
11 and I'm in the final throes of signing a contract
12 with them at Taylor Ridge, so I'm going to use Firm
13 Green.

14 THE COURT: Ms. Kujaca, do you have any
15 questions?

16 MS. KUJACA: Yes, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. KUJACA:

19 Q Mr. Connolly, you testified earlier with
20 Mr. Jordan that there are various items which need
21 to be cured on the Peoria site; is that correct?

22 A That's correct.

23 Q And correct me if I'm wrong, you
24 testified generally that a lack of funding has
25 prevented RTC from curing some of those defaults; is

1 that correct?

2 A Right.

3 Q What were some of those defaults that
4 were hampered by funding?

5 A Well, I don't know that I would
6 characterize them as defaults. It's just lack of
7 funding didn't allow us to bring a second engine
8 online. And there were certain things within the
9 landfill, like some of those settled areas within
10 the cap of the landfill that prevented us from doing
11 that timely. Although, we did some of that. But I
12 would say it's more related to the engine itself,
13 that second engine, bringing that second engine
14 online.

15 Q Before his death, Vince Muir was on the
16 site, wasn't he --

17 A Yes.

18 Q -- on a regular basis?

19 A Yes.

20 Q He worked on the site for seven years,
21 correct?

22 A About that, that's right.

23 Q Was he there daily?

24 A On a business daily basis, sure.

25 Q Okay. After his death, who is on this

1 site?

2 A It's Dave, and his last name starts with
3 a B. He works for Altorfer, Inc. Rob Fortelka.
4 And I also have Mike Watson available to come on
5 site, as well as Richard Walker. But the answer to
6 your question is David from Altorfer, and forgive
7 me, I forgot his last name, is on site, in addition
8 to Rob Fortelka, and Mike Watson as backup.

9 Q And did you testify earlier that Vince
10 Muir was paid by RTC approximately 60,000 per year
11 to do the work on the Peoria site?

12 A Yeah, that was his salary, right.

13 Q Okay.

14 A In addition to fringe benefits such as
15 his health insurance.

16 Q Was Mr. Muir in a position to cure any of
17 the default items on the Peoria site while he was
18 there?

19 A No. One individual without equipment on
20 the landfill couldn't do it. You know, you would
21 need a lot of parts to bring that engine back
22 online. I don't know if Vince could actually
23 install a head. He probably could. He probably
24 wouldn't be the best guy to do it. But he did -- he
25 did what he could do on the site, normal maintenance

1 and operation. But as far as -- you know, the thing
2 I'm focusing in on, the second engine, bringing that
3 engine online, Mr. Muir couldn't do that.

4 Q And now that Altorfer is on the site with
5 all of the people you mentioned earlier, are they in
6 a position to cure the site?

7 A Right, they are. In fact, they're
8 halfway done with the second engine. They're
9 definitely in a position to cure it.

10 Q But there's no funding to IIT at this
11 point?

12 A There is funding to IIT at this point.

13 Q And where is that funding coming from?

14 A That's the loan agreements. I think
15 they're dated pretty fresh.

16 Q Okay. You stated earlier that the Peoria
17 site is making approximately 25,000 per month?

18 A Right.

19 Q Where are these funds coming from?

20 A AmerenCILCO.

21 Q Is it true that AmerenCILCO hasn't paid
22 RTC since December of 2006?

23 A It was at one point, but that's been
24 settled. That's done.

25 Q It's been settled?

1 A That's done.

2 Q Since when has AmerenCILCO been paying
3 RTC?

4 A We received a payment to cover all of
5 those months. It's being exchanged actually
6 tomorrow morning between counsel. And there was a
7 court order entered I think last Thursday or Friday
8 between the receiver and AmerenCILCO settling the
9 case dismissing the suit.

10 Q And how much will be paid?

11 A \$212,000 and change, maybe 220. I can't
12 remember. 224,000. Thank you.

13 Q So between December of 2006 and now,
14 AmerenCILCO had not paid RTC anything for the
15 production of energy at the Peoria landfill?

16 A That's correct.

17 Q That's correct.

18 Was the engine at the Peoria site
19 shut down between January 4th and January 13th of
20 2008?

21 A Well, you brought that up at my dep. I
22 looked into that. There was some downtime in that
23 period, but it wasn't a full downtime.

24 Q How long were the engines online during
25 that time? Or I should say the engine.

1 A I can tell you in January they brought
2 them back online. You know, we looked at the
3 uptime. The uptime in December was like 96 percent.
4 In January it dropped to overall month around
5 70 percent because of those days. But I'll tell you
6 in February we're 100 percent online through the
7 month.

8 Q I was just asking about January.

9 A I'm sorry.

10 Q What was the reason for the downtime in
11 January?

12 A It was a sensor on -- an engine coolant
13 sensor that failed, and so it shut the engine down
14 automatically as a fail-safe. And so we had to
15 order a new engine cooler sensor through Altorfer,
16 and they reinstalled it.

17 Q And what was the price for that?

18 A I don't recall. I haven't seen that
19 invoice yet.

20 Q Will the shutdown, the slowdown in
21 January reduce the amount of revenue that the Peoria
22 site produces for that month?

23 A Yes.

24 Q Are reductions such as this accounted for
25 in the Peoria pro formas?

1 A Yes.

2 Q They are?

3 A Yes.

4 Q What percentage are you estimating that
5 the engines run at?

6 A Ninety-six percent.

7 Q Ninety-six percent? How do you come to
8 that amount?

9 A Well, over the course of the last 10
10 years, we've had uptime over 98 percent. And
11 96 percent is an industry standard as far as uptime
12 for energy plants.

13 Q But --

14 A So we've -- on that plant, we
15 well-exceeded 96 percent over the years. So
16 96 percent, it's an industry benchmark. It's a safe
17 number if someone wants to attack it. In addition,
18 we've been above -- well above 96 percent over the
19 course of 12 years as far as --

20 Q For the year beginning 2008, would you
21 say you're over that benchmark?

22 A Well, no. But that would be skued
23 because you're taking a few days in January into
24 account over a shorter period of time.

25 MS. KUJACA: Thank you.

1 THE COURT: Redirect, Mr. Jordan?

2 MR. JORDAN: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. JORDAN:

5 Q It's my understanding that the IEPA might
6 take the position that the -- taking all of the
7 various items off of the landfill at Springfield
8 would void the permit; is that --

9 A Yeah. I've heard that, yeah.

10 Q If that were to be found, would the trust
11 file a new permit application or do something
12 different?

13 A Well, we would file a new permit
14 application.

15 Q Would that change the time line that we
16 were talking about in terms of going online?

17 A I don't think so, no. I think it will be
18 90 days. It could be as much as 180, but that will
19 be it. It may move it out a couple of months.

20 Q And if the permit was, in fact, void,
21 then the transfer, the permit transfer would be
22 unnecessary; is that correct?

23 A That's correct.

24 Q All right. And whether the -- I think
25 Mr. O'Meara was kind of bouncing between it being an

1 administrative permit and a significant permit
2 modification. Either way, you would go forward with
3 that process; is that correct?

4 A Sure.

5 Q Okay. Now, you talked about January '05
6 and the engines going down, and then they weren't
7 fixed in Sangamon. Do you remember that?

8 A Right.

9 Q Why was it that they weren't fixed?

10 A Well, you know, it was a combination of
11 talking with the trustee. It was -- we had some
12 funding difficulties at the time. But in addition
13 to that, we were told by Mr. McDonald and Mr. Bent
14 that the entire collection system was going to be
15 ripped out in its entirety between the fall of '04
16 and the end of '05.

17 Q Who were those two fellows? Where are
18 they from?

19 A They work for Allied Waste Industries,
20 Inc., Mr. McDonald and Mr. Bent.

21 Q They told you what?

22 A They told me that the entire collection
23 system was going to be ripped out between the fall
24 of 2004 and the end of 2005 in order to correct this
25 overhead problem. And so between the trustee and I

1 discussing that, we realized in early 2005 that if
2 we were to fix an engine, we might get it online
3 for, you know, a month or two, and then we won't
4 have any gas to run it, and that would be the best
5 case scenario. The more realistic scenario, based
6 on what they represented to us, is that there was
7 going to be no gas for it.

8 Q And whose decision was that? Was that
9 your decision or the trustee's?

10 A Well, ultimately it was the trustee's.

11 Q Okay. We went through a lot of various
12 documents and allegations and everything else. If,
13 in fact -- it all culminates in an enforcement
14 action; is that correct?

15 A Right.

16 Q Had there ever been any enforcement
17 actions filed against RTC of which you're aware?

18 A No.

19 MR. JORDAN: Thank you. I have no
20 further questions.

21 THE COURT: Okay.

22 Mr. Connolly, you may step down.

23 (Witness excused.)

24 THE COURT: We will resume at 10:30
25 tomorrow morning. You will need to take the

1 materials off the desk because we'll be having a
2 motion call tomorrow. But you can certainly leave
3 them in the courtroom if that's convenient.

4 (Which were all the proceedings
5 had in the above-entitled cause,
6 February 12, 2008.)

7 I, GARY SCHNEIDER, CSR, RPR, DO HEREBY CERTIFY THAT
8 THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF
9 PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.

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A	additional 38:19 39:4 41:25 42:4 130:4 133:16 161:3 174:16 217:8 additionally 29:17 30:16 129:1 address 3:21 7:13 44:16 61:23 120:2 153:21 160:5 addressed 225:24 245:25 246:1,6 adequate 4:2 6:2,6 9:16 12:3 18:11 21:16 24:6,10,14 adjacent 156:16 adjusted 116:23,24 128:3 adjusting 129:11 adjustments 88:21 148:16 157:23 administrative 99:18 215:16,21,23 240:14 272:1 admission 65:11 233:19 259:3 admit 23:17 advance 17:13 37:22 66:12 67:1 114:16 193:25 195:18 advances 39:19 193:7 advancing 66:14 193:12 196:8 advert 226:16 advice 55:9 affect 71:6 109:16 afternoon 179:2,4 agencies 87:11 122:14 agency 23:19 101:13 108:6 151:3,4 213:21 217:5 238:9 252:5,10 agency's 252:4 agent 26:6,14 27:1 130:15 ago 14:4 19:2 31:18 45:10 104:8 225:8 233:16 255:22 257:2 258:8 agree 11:24 23:10 43:11 48:3 57:13 147:17 agreed 39:3 56:19 127:25 258:6 agreeing 39:6 agreement 12:11 13:20 20:17,20,21,24 34:10 36:7,16,21 37:11 39:8 39:9 40:6,10,12 42:9 53:2,9,10,19 56:21 57:2,4,5,6,14 58:19 60:15 84:2,10 87:19 91:14 114:11 154:11 154:12 155:11,13	161:2 180:13 183:1,9 185:21 187:13 191:21 191:24 192:7 193:23 193:24 195:5,7,8 196:1,7,12 198:7,19 204:25 205:21 206:3 208:6,21,23,24 209:10,11,13,25 210:19 211:4,15 237:18 239:24 243:7 243:15 244:13 249:18 249:24 250:21 251:19 251:22 252:6,16 255:1 257:8 258:16 258:18 agreements 24:15 195:22,24 262:3,8 263:3,19 267:14 agrees 21:17 Ah 35:14 ahead 5:24 27:6 71:10 112:5 135:24 136:6 179:1 254:7 air 6:11 10:21 16:2 23:18 85:7 99:9 137:12,15 212:1 Alabama 261:10 alerted 14:3 aligned 199:13 allegation 252:4 allegations 225:18,20 226:3 273:12 allege 73:12,18,20 alleged 71:25 73:14 225:11 230:14 251:10 251:23 259:23 Allied 1:17 3:11,13 4:5 4:9,12 5:2,15 7:4,9,15 9:9,10 10:6,10,14 13:1,6,8,10,22,23 14:4,10,10,13 15:13 15:17 17:13,15 18:6 18:17 20:8,16,25 21:17 35:8 54:1 96:23 97:3,10,16,24 98:17 104:2,4,7,9,21 109:7 110:8,16,19 111:8,20 112:12 113:18 114:11,15 115:12 118:9 123:1 137:19 152:23 164:15 166:22 184:24 200:18 201:13 202:19 203:7 203:14 220:9,12 231:5 237:15,17 243:18 248:19 249:22 257:25 258:1 272:19 Allied's 3:20,23 7:3 13:6 112:9 117:12,13 137:10 164:16,16,18 185:20 257:22 allow 9:17 106:15	150:4 265:7 allowed 24:22 33:8 104:14,15,17 111:1,1 135:20 150:12,14 258:1 allowing 237:19 allows 10:25 106:9 202:9,12 203:1 204:15 alternative 15:10 135:20 156:5 alternatively 174:1 Altorfer 81:14 82:2,7 82:14 83:2,5 87:18,19 87:22 88:6 90:9,10,12 92:16,17,21 128:11 128:12 129:17 262:5 262:12 266:3,6 267:4 269:15 Altorfer's 129:19 ameliorate 91:1,8 143:22 148:10 amended 36:6,6,15 37:2,6 39:7,8 210:15 210:17,18 211:3 amendments 58:19 Ameren 155:20 AmerenCILCO 12:8,9 15:12 16:10,11 124:15,19 128:4 155:3 156:2,6,11 267:20,21 268:2,8,14 American 9:10 253:4 257:4 259:17 amortization 32:14,23 48:16,20 amount 10:9 28:5 30:25 41:15 71:18 72:14,22 73:1 97:2,11 112:21 129:24 161:8 161:9 168:22,23,25 169:16 170:23 173:5 176:16 177:16 192:24 217:7 219:15 221:12 256:19 269:21 270:8 amounts 66:10 142:3 200:17 analysis 125:7 analyzing 76:23 242:15 Andrew 2:6 11:7 24:20 27:8,13 and/or 146:10 annual 87:10 131:3 248:6 answer 57:15 96:16 109:11 181:4 187:15 198:8 212:3,13 226:8 228:11 229:8 234:21 234:25 240:19,19 241:12,14 242:21 259:15 266:5 answered 49:23 226:9	anticipate 11:18 70:11 87:13 88:5 89:2,20 92:13 93:17 102:21 109:7 117:14 153:4 158:11,15 176:20 anticipated 10:14 167:4 anticipates 103:17 anticipating 112:1 anybody 80:21 113:3 139:9 161:7 216:6 anytime 56:23 161:4 apologize 35:17 126:14 186:15 Apostolides 1:14 3:6,7 64:19,23 apparently 209:21 appeal 217:11,14 257:16,19 appear 256:13 APPEARANCES 1:11 appears 8:3 91:15 244:12 256:14 apples 158:6,6 applicable 62:15 204:13 applicant 10:25 application 10:23 23:23,25 102:6 103:9 103:24,25 105:5,6 107:11,25 108:4,7,24 109:1 110:5 120:21 121:8 151:1 214:8 216:16 232:17 271:11 271:14 applications 7:19,21 100:13 103:15,16 105:9 122:13 applied 106:24 129:5 apply 204:1,3 213:9,13 applying 118:25 appointed 206:11 250:12 appointing 61:15 206:15 appointment 93:12,13 appraisal 31:17 appraised 44:8,12 47:13 appreciate 247:21 appropriate 103:15 198:1 232:16 approval 10:24 141:15 150:23 215:25 approvals 118:22 204:14 approve 175:18 approved 53:2 66:24 101:11,12,17 102:18 107:3,11 108:5 111:18 213:18,22 215:18
----------	--	--	--	---

<p>approximately 19:2 31:1,16,19 32:14,16 44:21 49:2 123:12 129:18 182:8 227:20 260:11 266:10 267:17</p> <p>Aquila 29:25 34:13 43:21</p> <p>area 76:7 79:17 120:10 128:19 137:21 140:23 141:11 149:23 156:24 156:25</p> <p>areas 120:4 223:3 265:9</p> <p>argue 185:1,3</p> <p>arguing 136:6</p> <p>argument 3:20 5:5,21 8:9 226:17 255:25 258:21,22 259:1</p> <p>argumentative 48:2</p> <p>Armitage 225:2 246:9</p> <p>arranged 19:16</p> <p>arrangement 97:14 161:22</p> <p>arrive 158:16</p> <p>arrived 39:20</p> <p>aside 38:3</p> <p>asked 49:21 66:9 134:13 188:3 197:17 207:25 211:10 216:3 234:23</p> <p>asking 67:6 190:23 193:20 212:5 218:22 233:4 234:15 240:13 258:23 269:8</p> <p>asks 197:25 208:5</p> <p>assembly 76:4</p> <p>asserted 72:12 225:4 231:19,23 232:3 239:2</p> <p>asset 20:21,23 46:24 48:7</p> <p>assets 19:11 29:6 43:9 47:21,22,24 71:3 187:12,18 205:4</p> <p>assign 12:19 14:8 20:12 53:13 199:15,18 215:11</p> <p>assigned 9:23 18:14 23:2 37:24 41:6 53:25 55:6 198:5,11 198:12 199:7,22 205:10 206:7,12</p> <p>assignee 18:21 58:14 61:13 62:7</p> <p>assigning 59:6 199:2</p> <p>assignment 9:7,17,18 10:3 12:13 14:2 53:17 77:1 102:5 114:22 173:16 190:21 240:13</p> <p>assigns 155:16</p> <p>assist 81:11 83:3,5,15</p>	<p>85:4,6,13 123:17 236:7</p> <p>assistance 19:22</p> <p>assisted 123:24</p> <p>assisting 87:6,11 131:1</p> <p>associated 34:15,19 191:12 200:13 230:19</p> <p>assume 20:10,12 53:13 64:21 81:3 103:21 127:13 129:17 165:9 254:4 258:2 263:8</p> <p>assumed 9:21 18:13 20:10,14 23:2 37:24</p> <p>assuming 30:23 59:5 66:24 98:20,22 99:15 106:19 126:21</p> <p>assumption 9:7,17 53:17 119:15 173:16 194:11 215:15 240:12 258:6</p> <p>assumptions 39:15 124:11,14 126:17 157:20 158:2,3 163:4 165:8,18</p> <p>assurance 4:2 6:6 12:3 18:11 21:16 24:6,10 24:14</p> <p>assurances 9:16</p> <p>assure 206:23</p> <p>attached 83:8 102:5</p> <p>attachment 115:4</p> <p>attack 270:17</p> <p>attempt 66:2 70:25 231:22</p> <p>attended 75:8 187:2</p> <p>attending 17:10</p> <p>attention 60:15 202:17 223:20 256:15</p> <p>August 28:24 75:1 124:22 144:9 182:14 186:25 187:9 190:21 198:24 231:2</p> <p>authentic 253:22</p> <p>authenticity 233:21 244:20,25 245:6,22 246:10</p> <p>authority 238:12</p> <p>authorize 142:2</p> <p>auto 129:25 212:18</p> <p>automatically 269:14</p> <p>automobiles 212:19</p> <p>available 13:16 40:7,8 41:14 132:14,17 138:9 140:6,7 147:17 149:12 151:15 153:10 168:12 169:4,5,20 171:2,2,7,11 177:14 266:4</p> <p>avenue 213:20</p> <p>average 49:18 78:1,4 125:4</p> <p>averaged 164:10</p>	<p>avoid 142:4</p> <p>awaiting 69:20</p> <p>aware 13:23 14:2 59:21 59:25 93:24 94:2,3 149:2 182:21 195:7 273:17</p> <p>a.m 1:6</p> <p>A2002-00155 234:19</p> <hr/> <p>B</p> <hr/> <p>b 1:4 3:2 64:10 115:4 202:18 204:8 266:3</p> <p>Bachelor 75:5</p> <p>back 11:14,17 22:8 37:10 44:13 55:16 59:10 67:22 75:25 84:16 103:3 104:7 116:20 130:16 133:12 136:25 144:11 151:11 160:24 170:12 191:6 214:13 218:15 219:11 249:10 266:21 269:2</p> <p>backdoor 238:19 239:2</p> <p>background 19:21 75:3</p> <p>backup 86:10 266:8</p> <p>bad 151:23 161:15 243:22</p> <p>Bag 152:7,9</p> <p>balance 42:20,25 168:16,18 169:12</p> <p>balances 207:13</p> <p>Banco 53:5</p> <p>bank 192:13 207:13</p> <p>bankruptcy 1:1 16:25 16:25 22:11 52:12 67:10,12 68:7 172:23 179:16 180:1,9,20 206:4,7 257:7 258:2</p> <p>bar 5:20</p> <p>base 116:18 122:11 130:23</p> <p>based 39:14 40:3 71:8 110:16 112:9 122:17 124:14 125:16 127:10 128:10 131:3,19 159:22 161:12 166:16 166:18 168:10,15,24 176:15 234:20 247:19 273:5</p> <p>baseline 158:20</p> <p>basically 166:25 252:6</p> <p>basing 157:16</p> <p>basis 17:12 42:5,23 46:17 47:15 55:4 69:10 78:1 85:14 90:17 98:14 153:22 154:8 160:17 238:20 244:16 245:22 253:21 265:18,24</p> <p>bears 21:18</p> <p>beating 119:22</p> <p>beauty 161:21</p>	<p>Beecher 142:25 143:1,3 143:4 149:5</p> <p>began 148:2 180:16</p> <p>beginning 270:20</p> <p>begun 69:19</p> <p>behalf 1:13,14,17,18 3:4,7,11,12,15 18:17 23:25 27:2 54:13,15 56:17 64:20 105:5,8 173:17 239:17 243:12</p> <p>belabor 159:14</p> <p>belief 69:13</p> <p>believe 20:6 25:14 29:12 35:4 40:3 43:16 44:7,13 46:2 48:18 51:7 53:21 55:11 56:7,12 68:13 72:25 73:6,19 91:12 100:2 110:23 111:22 117:8 121:2 124:17 130:16,19 135:11 137:24 149:8 150:14 157:8 161:17 168:11 180:24 186:8 188:13 190:6 194:1 199:6,21 203:25 205:11 207:5 210:20 219:17 224:2 224:12 227:2,4,5 232:18,19 235:6 238:5 242:10 243:8 244:9 248:25 252:10 258:7 260:23</p> <p>believed 71:3</p> <p>believes 24:11</p> <p>bell 182:18</p> <p>Belleville 146:17</p> <p>benchmark 270:16,21</p> <p>beneficiaries 28:15 29:14 56:22 61:8 183:1,10,13 185:13 208:18</p> <p>beneficiary 28:17 29:17,18 38:19 39:4 54:24 56:14 184:9</p> <p>benefits 266:14</p> <p>Bent 111:23 228:20 272:13,20</p> <p>Benz 166:21</p> <p>Benz's 166:16,19</p> <p>best 12:3 24:5 78:22 88:15 132:25 156:7 187:11 266:24 273:4</p> <p>bet 93:20</p> <p>better 27:16 28:6 86:4 153:22</p> <p>beyond 66:15 117:8 119:24 137:25</p> <p>big 111:25 135:16,16 137:5,21,24 140:13 143:5 166:7 250:5</p> <p>bigger 58:1 86:8 139:13 171:4</p>	<p>big-picture 138:12 143:4</p> <p>big-ticket 140:9</p> <p>bills 195:16</p> <p>birthday 171:20</p> <p>bisect 162:13</p> <p>bisects 156:3</p> <p>bit 53:1 68:25 86:8 127:19 143:11 159:21 160:19 201:4 204:6</p> <p>black 193:16</p> <p>blame 142:6</p> <p>blended 125:4</p> <p>blockage 150:2,2,5</p> <p>blocked 149:23,25</p> <p>Bloomington 7:11 9:12 11:14 12:15,22 13:9 13:13 20:9 33:22 55:7 62:14 92:15,19 96:19 98:1,2 102:25 103:4 111:15,16,17 144:24 154:22 155:22 156:13,14,25 165:24 166:4,10 171:3 178:10,15 200:8 204:20 260:25 262:12</p> <p>blower 94:15</p> <p>blowing 124:8</p> <p>blurred 124:7</p> <p>board 38:23 51:8,10,13 56:19 182:16,19 217:12</p> <p>Bohan 1:16 3:10,11 18:16,18 21:11 42:17 42:19 48:23,25 50:11 50:12 57:20,23 58:4,7 58:11,12 59:12,13 60:4,10,12,22,25 64:16 67:6 68:24 71:8,11,13,24 72:13 73:25</p> <p>boilers 95:14</p> <p>bond 10:10 18:7,9 97:9 97:24 111:8 112:17 112:21,25 113:4,7 115:13,20 120:14 201:1,5,10 202:13,22 203:2,21</p> <p>bonds 130:22 131:2 202:16 203:9,10</p> <p>books 34:18</p> <p>boot 151:22</p> <p>bore 90:1,1</p> <p>boring 164:23</p> <p>bottom 84:19 86:19 160:4 235:3</p> <p>bought 104:21</p> <p>bouncing 271:25</p> <p>breach 208:13 255:6,8 255:20 256:20,24</p> <p>breached 255:1,12 256:8</p>
---	--	--	---	---

break 43:22 60:2 94:4 breaks 148:18,20 149:16 168:2 brief 18:18 21:10 65:2 178:25 briefed 225:25 briefly 253:14 271:2 bring 16:12,15 20:6 88:23 89:7,11,16 90:2 116:15 117:4 119:24 127:11 133:16 135:9 147:15 148:4,9 170:12 174:16,18 265:7 266:21 bringing 89:3 148:7 154:6 265:13 267:2 brings 86:8 broad 185:8 brought 5:20 268:21 269:1 BTU 13:14 96:9,10 97:22 BTUs 164:6 bucks 128:5 budget 142:10 177:5 build 10:5,16 13:1 97:8 97:21 98:10 99:1 103:12 107:15 111:8 171:3 178:5,6 212:18 building 13:7 30:4,6,17 30:22,23 31:13,17 33:20 44:5,8,11,17 45:19,25 46:9 78:15 96:20 108:21 110:16 112:8 116:4 buildings 34:19 46:21 builds 10:7 116:1 built 11:2 13:5 79:16 116:5,6 131:5 178:17 bulk 218:3 bullet 221:10 burden 18:19 20:4 21:18 buried 149:24 business 19:4,8 29:7,20 38:15 43:8 48:14 49:3 51:24 52:3,24 55:2,5 59:2 63:17 70:1 79:17,19 86:4,4 263:17,17 265:24 businesses 55:24 buy 12:8 67:22,23 97:1 97:16 111:2 buyer 67:5 buyers 67:10 68:2 buying 104:7 buys 69:6 bypass 135:19 138:19 150:3 C CAAPP 6:11 10:20	14:12,21 16:1 99:5,8 99:12,13,15,17 101:23 103:15,24 105:6 106:20,21,23 107:18,21,23,25 108:7 120:18,20 121:8 212:14,15,21 213:1 215:17 230:5,6 230:7,13 cake 4:20 calculation 128:9 calculations 123:2 call 24:20 47:25 48:5 59:15 74:8 94:12 160:13 216:7 230:4,4 249:4 274:2 called 8:8 32:9 52:8 60:23 68:9 73:15 155:3 calling 24:5 calls 69:7 Calumet 76:14 Calvert 77:18 cancel 174:4 candlestick 94:22 cap 120:4 151:23,25 153:2,6 154:1,5 176:4 176:7 223:2 265:10 capability 19:24 capacity 18:22 147:14 151:15 152:22 158:22 capital 23:14 129:4 132:1,5,21 133:2 142:14 170:3 capped 140:17 capping 111:24 166:20 capture 32:25 care 16:19 113:17 174:21 career 105:11 112:20 123:11 125:21 153:17 203:8 careful 153:15 Cargill 13:15 156:17 Carl 164:14 carries 85:25 case 3:24 4:15,18,20 6:7,19,24 8:8 18:19 41:24 46:12 65:17 67:19 71:14,16 72:1 86:10 88:1 99:10 124:17 180:2,15 197:13 208:9,10 209:12 213:7 216:22 224:7 227:3,4,5 233:17 239:6 242:10 255:8,10 259:18 260:10 263:12,20 268:9 273:5 cash 32:6,16 33:8,9,11 43:6 46:17,18 47:16 47:22 49:1 50:10	136:17,22 149:13 160:1,13 162:2 164:24 166:6 178:19 cash-flow-type 192:1 Cat 211:25 catchall 107:19 category 140:22 151:14 Caterpillar 29:24 34:12 43:20 88:13,14 194:2 cause 70:19 222:6,21 223:23 227:25 230:22 274:4,8 caused 22:12 23:5 221:19 228:1 causes 151:16 222:3 caveat 235:6 CCA 250:16 ceased 180:4,15 cell 110:23 center 120:7 cents 125:5 126:23 certain 5:21 7:19 15:1 17:19 29:6,22 35:9 39:1,14,17 71:3 86:11 104:13,15 120:6,7 122:21 252:18 258:4 265:8 certainly 3:22 19:20 55:23 102:24 116:24 123:21 132:11,16 151:16 153:8 168:6 197:17 207:1 223:2 255:3 274:2 certificate 75:11 certificates 130:19 certification 199:11 248:7 certified 121:5,7,16 CERTIFY 274:7 cetera 127:23 CFM 147:17 164:13,20 164:21 171:4 CFM-type 170:2 chance 234:2 change 16:4 22:22 28:21 56:23 57:11 70:4 101:22 102:15 127:15 131:14,17 139:21,24 143:24 166:15 175:23 176:11 176:15,16 216:19 268:11 271:15 changed 22:16,21 78:5 78:7 127:3 135:25 changes 26:22 88:19,20 176:25 changing 70:4 128:17 129:10 Chapter 1:15 3:8 17:1 17:2 53:3 67:13,13,15 67:15 132:12,15	140:4 173:20,21,22 180:15 187:13 198:20 229:3 250:12 character 225:21 characterization 92:21 characterize 48:8 265:6 charge 73:4 charges 263:5,11 check 68:2 90:16 259:20 checking 88:20,21 192:18,21 checks 68:18 Chem 76:11,12,16 Chemical 76:7 77:7 Chicago 1:5 31:14 44:2 44:16 76:7 77:3,4 chief 8:9 157:15 Chiplease 11:6 19:15 20:13 21:21 29:17 38:16,19,25,25 39:3 40:9 50:15,15 51:3,14 51:20 52:7,24 53:5,10 53:17,22 54:9,16 55:4 55:14 56:13,18,22 57:10 58:13,21 60:17 61:9 62:3 82:8 119:16 180:14 182:25 183:18,22,25 184:5,8 184:17 187:13 192:7 192:12 193:8,10,12 193:25 194:19 195:2 195:17 196:2,7,8,24 198:6,19 199:5 204:19 205:3,14 206:21,24 207:3,9,14 207:19 208:6,12,23 choices 252:10 choked 139:18 chop 14:13 chose 176:9 Christmas 175:6,12,16 CID 76:13,19 CILCO 124:19,21,25 154:9,10,12 157:22 182:3 198:10,18,23 199:13 circuit 259:14 262:25 cited 152:17 cites 6:16 city 1:18 3:15 4:9 9:8 15:23 17:9 25:15,18 25:20,21,24 26:2,3,5 26:7,14,17,21 27:1 120:1 129:25 150:21 150:25 civil 78:20 claim 72:11 173:20,21 173:21 179:22 260:8 260:15 claims 258:15 260:4	clarify 21:6 66:19 Clarion 146:15 classes 75:8 123:16 classification 134:24 classified 134:10 clause 20:25 Clean 10:21 16:2 23:18 77:5 99:9 212:1 cleaning 128:13 cleanup 13:14 clear 97:17 102:25 126:6 132:17 197:12 214:7 219:4 CLERK 3:1 60:6 client 9:16 15:13 54:1 55:6 246:2 clients 245:25 close 98:19 169:12,18 closed 140:17 closely 22:14 closer 144:1 close-out 77:2 closing 30:11,13 46:14 Club 182:17 code 21:15 217:5 collect 139:25 collecting 139:7 collection 10:7 13:2,5,7 14:16 19:6 93:22 94:5,5,6,12,16,19 95:16 96:2,5,20 97:1 97:3,16 98:3,7,18 104:3,4 110:19,22 111:25 115:5 118:9 128:15 129:6 139:4 139:22,25 143:6 153:3 154:5 169:25 171:6 178:12 187:8 188:6 189:5,8 190:1,2 190:13,18,20 191:9 218:10 225:11 228:21 237:1,3 239:13 240:11 242:6,12,18 246:21 247:3 249:11 253:1,11 254:16,19 254:21 256:3 257:3 257:21 259:24 272:14 272:22 college 75:23 76:2 colloquy 247:19 Colony 30:4,22 Columbus 146:14 combination 135:4 272:10 combust 91:6 combustion 91:4 116:15 151:15 154:6 230:10 come 41:24 86:11 125:5 127:21 128:23 164:4,7 171:10 191:25 205:17 209:4
--	--	--	---	---

212:17 226:5 266:4 270:7 comes 217:5 coming 22:5 35:10 39:17 41:22 82:20 193:21 267:13,19 commence 106:2,6 114:15 202:20,24 commenced 117:22 commencement 114:6 commercial 44:2,15 commit 63:13 commitment 33:12 34:9 239:24 243:7,15 244:13 249:18,24 250:21 251:19,22 252:6,16 common 52:4,6 94:7,13 communicating 235:11 235:20 comp 129:24 companies 52:1 80:24 92:14,24 93:1 122:13 180:23 company 16:24 17:5 26:17 29:21 32:9 43:14 47:1 50:25 51:6 52:8 58:23 59:18,18 68:9 69:4 73:15 77:6,21 78:23 80:2 92:10 116:1,20 116:20 159:5 194:25 256:4 comparative 153:22 comparison 131:25 compensation 194:12 competence 18:22 complaint 240:10,14 complete 33:9 39:18 42:1 109:13 112:1 214:25 215:2 completed 16:14 completely 98:20 116:22 completeness 214:23 completes 211:18 completing 98:17 completion 110:25 compliance 3:24 4:8,11 16:22 17:16 24:1 62:15 77:11,15,24 80:10,12 81:4,7 85:8 85:16 141:21 144:17 144:21,23 145:5,16 146:1,10 147:1,8,12 147:19 149:1 151:12 153:4,15 188:17 189:22 190:8,10,24 225:1 239:24 243:6 243:15 244:13 248:6 249:18,24 250:21 251:19,22 252:5,15	compliant 24:2 153:6 153:12,14 complicated 255:9 comply 177:9 249:15 complying 5:7,10 component 97:18 189:7 compounding 139:12 compressed 137:12,15 compressor 92:2 94:15 compressors 92:1 129:7,8 218:3 229:17 computer 35:12 comrades 19:23 concentration 222:24 223:5 concerning 55:7 70:9 conclude 25:4 conclusion 205:17 226:6 229:4,6 244:17 conclusions 259:2,6 concurrently 131:20 condensate 82:20 condition 104:6 135:10 251:15 conditions 22:12 conduct 64:2 confirm 57:9 83:11 121:22 confirmed 130:17 conform 114:12 134:25 conformed 135:3 confuse 9:4 Congress 17:23 138:20 138:21,22 140:10 142:18 256:3,20 conjunction 214:15 237:23 239:17 258:6 connect 149:21 150:1 255:16 connected 255:16 Connecticut 146:15 254:21,22 connection 192:18 Connolly 2:8 6:18,24 11:15 15:3,3 19:17 21:19 29:3,4,8 34:3 39:11,16,25 41:7,11 41:12 42:11 56:8 59:15 60:18 61:10,15 61:16 63:5 64:3,13,15 70:5,9,12 74:9,11,16 74:18 100:23 113:14 113:22 114:10 119:7 122:19 179:3,14 181:24 182:14 184:16 185:7 186:20 187:1 193:21 195:17 197:14 202:5 203:22 205:12 206:2,24 208:22 209:9 210:8 211:17 217:15 219:10,23 220:20 222:2 223:18	224:19 225:19 226:24 229:23 232:15 233:1 233:16 234:7,14 239:5 241:2,18 243:21,22 244:3 245:17 246:5,11,16 247:25 250:4,25 252:25 253:18,23 254:9,14 255:11 256:16 257:20 258:10 258:23 259:9 260:7 260:23 262:2 263:2 264:19 273:22 Connolly's 19:20,21 63:22 69:25 70:2 226:7 consented 56:18 conservative 31:23 conservatively 164:11 consider 8:5 179:18 considering 206:19 considers 203:14,17 consisted 217:23 consistent 20:1 158:8 constant 128:4 constitute 38:23 construct 97:21 204:2 213:10 constructing 106:7,19 construction 10:5,13 14:20 15:17 77:12,14 77:25 78:13,15 79:15 96:2 103:8,10,14,23 105:4,9,17,24 106:2,5 107:13,14 108:24,25 110:4 203:9 204:2 211:23 212:20 213:2 213:9,18,25 218:20 consult 24:24 63:20 consultant 216:7 consultants 22:20 80:11,12 81:8 86:6 108:19 150:19 262:9 262:23 consultation 229:3 consulting 81:10 84:10 consume 147:14,18 consummated 33:20 contact 150:19 contemplates 208:24 content 226:14 242:15 context 185:15 201:4,7 contingency 64:10 contingent 22:2 continually 139:1 continue 33:9 81:7,13 82:13 87:3,5 91:24 148:6 155:9 161:18 192:11 220:15 226:19 continued 76:18 77:20 77:22 134:22 152:4 179:25 222:17	continues 29:16 214:25 continuing 16:3 22:17 87:13 continuity 78:6 continuous 78:8 91:4 continuously 179:7 contract 4:25 9:20 12:16,19 14:8 15:11 15:22 21:1,7 26:1 31:4 34:6 45:13,18,20 45:23 46:1,10 67:5,22 67:24 68:12 81:8 83:22 84:23 86:16,23 86:24 91:16 92:7,8 112:22 114:22 128:8 130:1 154:8,10 155:16 182:3 198:10 198:18,23 199:2,13 202:9 208:13 254:20 254:21 255:13,17 256:3,9,21,25 257:4 257:14,21 258:2,7 263:4 264:6,9,11 contracted 82:10 contractor 26:16 112:18,20 115:20 202:15 Contractors 12:16 144:11 contracts 9:7,18 18:3 18:13,23 19:24 20:7 20:11,14 23:2 37:24 39:1 41:6 53:11,12,16 53:25 54:8 55:6,21 58:15 59:2,17,23 61:14 62:7,10,14 64:9 64:11 82:17,18,22 83:8,19 93:19 108:20 184:13 198:3,6 199:16,18,22 206:7 206:12 215:19 254:11 254:16 262:4,21,22 contribute 39:2 control 10:7 13:5,7 14:16 33:7 52:6 93:22 94:17,18 95:16 96:3,7,21 104:3,5 208:24 217:12 225:11 237:1,10 239:13 242:6,12,18 246:21 247:4 249:12 253:1 253:11 257:4,21 259:24 controlled 19:15 76:20 controversy 20:22 convenience 7:7 convenient 274:3 conversation 70:3 175:4 conversations 13:18 156:8,20 conversion 10:6 19:6	95:3,5,17 96:7,14 97:8,22 98:11 187:8 187:20,23 188:20 189:16 190:14,18,19 191:1 240:11 converting 187:24 Cook 259:13 coolant 88:19 92:3 269:12 coolants 82:23 cooler 269:15 cooperatively 120:1 coordinate 80:11 81:7 81:12,14 82:14 235:20 copy 57:2 58:2 84:20 113:21 209:15,22 210:4 211:15 224:21 233:12,14 242:9 245:13 Corp 70:25 71:1,19,21 72:17 73:16,23 194:3 corporate 70:20 71:1 corporation 1:5 3:2,25 11:7 28:2,9,10 29:15 30:5 31:11 37:6 38:24 40:13,21 42:20 75:13 76:1 77:8,9 238:8 correct 30:10 43:1,4,6 43:10,24,25 44:2,3,22 44:23 45:4,14,16 46:11 47:4 49:13,24 50:16,19,21,23 51:2,4 51:18 52:11 53:13,14 53:21 54:3,19,20,23 54:25 55:3,19,21,22 55:25 56:2,6,7,10,15 62:25 63:1,19 64:1,12 64:14 68:17 74:20,23 84:20,25 88:4 90:23 91:9 101:18,19,23,24 103:4,20 104:23 105:1 115:1 117:18 119:3 122:23,24 132:2,3 145:4 146:8 162:19 163:6 165:10 165:21 166:3 176:13 178:9 179:8,12 180:5 182:2,12 184:1 187:9 187:10 188:7,18 191:3,5,10 192:9 196:16 199:25 200:1 200:5,8,14,19 203:24 204:21,22 205:10,16 206:5,17 212:9,10 213:15 215:23 217:18 217:20,24 220:1 221:17 222:2 227:21 228:3 229:13 230:2,3 231:12 248:8 249:2 251:3,8,10 252:1,8
---	--	---	---	--

<p>257:15 260:24 261:12 261:13 262:1 263:6 264:21,22,23 265:1 265:21 268:16,17 271:22,23 272:3,24 273:14 corrected 65:25 correctly 44:20 correspondence 245:18 247:15 corresponding 202:23 corroded 137:11 corrosion 137:14 cost 23:6,11 89:3 90:5 112:23 116:10,19 131:5 133:18 139:24 144:3 175:21 177:8,8 178:1,10,15 costs 30:12,13 174:13 177:7 193:25 194:20 200:13,16,20 203:20 263:5 counsel 24:24 25:1 27:4 55:9,10 236:3,4 238:9 259:20 268:6 counterparty 59:1 263:4 country 79:24 80:1 county 1:18 3:15 4:10 9:8 15:23 17:10 25:15,18,20,21 26:3 26:14,18,21 27:1 120:1 129:25 150:21 150:25 259:14 couple 65:2 69:5 76:11 76:18 99:2 116:19 213:15 271:19 course 25:8 43:8 75:10 116:6 119:22 123:19 148:8 155:15 207:22 218:2 245:3 270:9,19 courses 75:14,17,18,20 123:22,23 court 1:1 3:17 4:22 6:8 6:14,25 7:7 8:2,16,21 8:22 9:2 14:3 18:15 20:11,24 21:4 24:16 24:18,22 25:23 26:6 26:11 27:3,6,16 30:18 30:21 31:7 32:1 35:3 35:6,10,16,23 36:3,8 36:13,17,22,25 37:16 42:16 48:22 50:8 53:24 57:19,21,25 58:6,10 59:7,11 60:1 60:8,21,24 64:18 65:9 65:14,19,24 66:17 68:11,15 70:17 71:7 71:10,23 72:10 73:5,9 73:12,17,24 74:1,3,7 75:4 83:16 84:14 100:7,16,20 102:1</p>	<p>113:24 114:2,8 119:5 121:10,21 124:3 141:16 150:9 155:15 155:17 157:4,14 158:6 159:14 162:25 164:24 165:1,4 173:8 173:15 178:23 179:1 184:25 185:17 186:5 186:9,11,16 197:3,7 197:12,17,20,23 198:24,25 201:15,17 201:24 202:1 203:16 203:17 209:16,23 210:4,11,14,21,25 211:5,8,14 215:19 217:14 220:10,13 225:3 226:2,13 231:7 231:10,13,17,20 233:15 234:4,6,10 236:19 237:19 238:10 238:12,20,23,25 239:9 240:9,21 243:23,25 244:14,20 244:24 245:8,10,13 245:19 246:14 247:11 247:13,19 250:18 253:15,20 254:3,25 255:12,17 256:7,24 257:8 258:3,19 259:1 259:14 260:9 262:25 263:7,14,24 264:2,14 268:7 271:1 273:21 273:24 courtroom 24:23 25:4 25:11 59:15 274:3 court's 3:1 60:6 155:17 covenants 59:23 cover 193:13 211:24 219:3 268:4 covered 130:16 218:17 218:25 covers 130:7 174:23 213:22 co-insured 130:5 co-lenders 50:14 co-op 75:25 CQA 175:15 CRA 255:8 cracked 128:18 create 15:9 17:8 59:17 created 28:14 credibility 22:25 credit 17:7 34:20 37:14 37:15 40:6 41:25 42:4 117:25 171:2,8 177:13 202:22 204:18 creditworthy 156:11 crews 174:21 critical 6:5 cross-examination 42:18 60:9,11 64:25 179:5 264:17</p>	<p>crude 49:9 CSR 274:7 culminates 273:13 cure 9:13 21:13,23 23:6 23:9,11,12 37:25 38:3 200:16,20 203:20 266:16 267:6,9 cured 264:21 curing 264:25 current 19:16 73:22 86:24 164:1 212:8 currently 47:23 79:12 84:24 101:11 160:18 179:15 181:25 182:22 187:19 189:18 194:22 curtain 22:8 customary 263:10 CX 2:5 cylinders 90:1,2 C-o-n-n-o-l-l-y 74:17</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 2:2 daily 265:23,24 damages 71:25 dams 78:15 date 66:23 84:7 89:6 115:7 119:14,19 121:16 122:17,18,18 122:21 127:11 148:19 168:5 196:12 235:13 250:1 252:18 dated 87:21 220:24 267:15 daughter's 171:20 Dave 266:2 David 1:16 3:11 266:6 day 122:8 130:20 232:24 days 38:8 66:23,25 67:1 89:21 97:7,20 105:19 105:19,25 107:16 109:2,22 114:16 115:3 119:16,19 127:10 167:16 202:18 217:7,8 269:5 270:23 271:18 day-to-day 77:21 79:10 dealer 88:14 deals 6:1 Dearborn 44:18 death 81:16,19 90:15 265:15,25 debt 30:7 31:19 32:15 44:10,20 45:3 171:17 debtor 1:6 22:22 23:5 99:12 180:7,16,22 debtor's 22:16 debug 106:10 debugging 107:17 December 9:20 15:22 16:7 32:12,12 49:15</p>	<p>49:19 127:8 220:5 221:16 227:7,14 267:22 268:13 269:3 decided 54:7 59:17 134:20 229:6 deciding 63:13 decision 7:21 54:5,10 54:12,15 56:3,11,16 58:15 273:8,9 declare 206:6 declares 206:3 decomposing 94:9 deemed 101:11,12 102:18 122:8,17 deep 149:25 default 206:4 257:10 266:17 defaulted 254:15 257:8 defaults 12:1 20:2 21:14,23 23:12 64:9 205:13 206:2 258:11 264:25 265:3,6 defendant 71:15,17 defenses 258:15 defensive 6:23 define 187:22 defined 94:1 106:14 175:11 definitely 15:16 92:18 101:15 130:6 132:7 204:15 267:9 degree 75:6 degreed 78:19 degrees 148:24 Delaware 172:1,3 delivery 122:18 demonstrate 19:21 denial 217:4 denied 105:14 216:25 217:1 denies 216:15 denominator 94:7 deny 213:5,21 217:11 denying 197:19 217:6 dep 172:7,10,14 180:19 181:3 207:6 228:18 230:15 236:2 244:8 268:21 Depending 105:18 depends 49:4,8 105:20 deposit 208:24 209:11 deposition 6:16,19 26:19,20,22 43:13,17 65:3,6 130:17 166:25 171:19 181:24 187:2 187:16 193:1 196:23 233:2,10 234:15 244:4 depositions 175:5 depreciation 32:13,22 48:16,19 derived 49:11</p>	<p>Des 146:16 Describe 223:22 described 66:10 69:18 96:6 109:21 design 108:14,19 109:5 110:6,10 139:21,24 143:24 152:5 169:8 175:14,23 177:3 designate 53:11,16 designated 29:5 59:16 designating 58:25 61:12 62:6 designation 53:9 59:4,5 designed 176:23,23 designee 20:13 designing 169:8 designs 79:7 96:6 desk 7:20 216:9 274:1 destroyed 228:4,6 details 209:7 determination 214:18 214:24 217:10,10 determinations 157:17 determine 7:25 62:18 63:10,22 64:3 123:3 determined 172:18 determining 4:1 23:1 112:12 develop 39:22 108:17 developing 108:18 development 79:17 96:1 256:4 device 118:1 237:10 devices 94:14 116:16 devolve 141:6 de-designating 58:25 diameter 120:6 150:8 die 252:11 died 16:7 81:23 differ 109:21 difference 71:22 154:2 differences 158:1 different 20:2 31:10 69:5 110:2 122:14 149:22 159:17 188:4 262:3 271:12 difficult 148:23 208:16 219:1 249:15 difficulties 5:15 272:12 difficulty 5:7,10 35:19 113:1,3 dimension 104:13 direct 27:9 60:15 62:24 74:12 95:9 128:9 183:5 188:2 202:17 223:20 256:15 directed 41:10 134:16 238:7 directing 42:10 direction 139:4 directly 47:5 51:5 80:5 82:14 199:3</p>
--	---	--	--	--

<p>director 28:11 50:20 51:20,21 52:15 77:14 directors 51:8,10,13 disagree 252:3 disagreed 137:18 disagreement 14:18 disburse 223:4 discount 166:13 discovery 126:14 246:3 discretion 41:13 186:22 Discretionary 186:9,17 discuss 251:6 discussed 39:16 41:10 50:2 52:4 132:13 241:3 discussing 31:10 70:21 233:15 273:1 discussion 38:21 discussions 70:8 90:11 168:10 dismiss 259:17 dismissed 260:13 dismissing 268:9 disposal 9:10 82:20,21 128:1 disposition 76:24 dispute 134:9 233:20 disregarded 22:9 disrespect 183:16 206:8 dissolved 77:6 distribute 185:12 186:4 distributions 46:20 DISTRICT 1:1 dividend 19:3 28:4 160:11 187:4,17 Division 1:2 76:20 docket 68:3 document 83:24 84:20 84:21 101:3 102:5,10 103:18 121:25 126:20 172:15 184:7,21 205:17 210:12 211:9 223:17 224:18,25 225:2 226:5 231:15 231:15 239:1 244:2 244:15,25 245:2,23 246:6 documentation 232:17 documented 22:5 documents 3:21 83:11 104:9 124:14 207:8 253:18 273:12 Dodge 145:3,6,13,20 188:13,14 doing 33:10 48:12 59:24 79:23 82:15 85:15,19 88:17,18 102:21 114:20 128:18 128:25 129:2 153:18 194:9 195:10,13 229:7 262:18 265:10</p>	<p>dollar 72:19 dollars 73:2 115:10,11 128:3 167:11 175:24 192:17,22 Doraville 76:3 dormant 28:6 dots 255:16 doubt 197:13 246:2 doubting 245:22 downtime 90:21 268:22 268:23 269:10 draft 217:4 draw 11:13,15 17:7 118:6 142:16 167:7 167:17,17,20 170:3 174:25 177:19 196:13 196:13 204:18 244:17 259:2,5 drawing 161:18 167:14 175:2 196:15 drawn 11:16 196:6 draws 11:10 167:4 171:7 177:13 206:17 Drew 11:8 dries 23:16 drop 168:18 dropped 269:4 drops 127:18 drove 22:11 98:18 due 17:15 121:25 138:1 167:15 duties 77:17 80:10 241:18 DX 2:5 Dykema 55:11</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 2:2 earlier 60:16 66:5 112:10 127:6,9 200:22 249:14 256:2 264:19 266:9 267:5 267:16 early 17:23 28:5 108:21 167:19 168:6 228:19 273:1 earned 10:11 32:18 earnest 68:18 earnings 32:13,22 48:15,19 easier 36:10 250:4 easily 6:21 109:4 EASTERN 1:2 easy 18:8 165:5 eat 4:21 EBIDA 48:22,24 economics 123:20 economy 116:25 educational 9:2 75:3 effect 6:20 133:4,14 effective 66:23 115:7 119:14 122:21 127:11</p>	<p>148:19 168:5 195:23 effectively 104:6 110:6 181:11 193:14 194:16 215:14 eight 78:4 164:9 255:5 EIPA 150:19 214:6 either 6:20 8:10 46:16 46:21 47:18 51:5 62:18 80:5 105:19 145:16 146:24 207:16 213:18 216:25 217:7 251:5 252:2,7,19,21 272:2 elaborate 7:24 elect 97:15 108:21 111:2 election 96:25 97:16 98:6,10 111:7 electric 126:2 158:15 electrical 88:25 116:14 218:3 229:18 electricity 15:9,12 16:10 19:7 95:11 154:14,15,16,19,25 155:1 187:25 electronic 126:1 electrons 163:14 elects 201:1 emission 107:20 emissions 222:22 employed 25:25 26:17 179:7,25 181:10 241:19 employee 81:21 130:21 131:2 employees 4:1 19:18,23 78:3 180:25 181:14 181:15,16,17,20,21 193:8,18 194:22,25 195:3 enclosed 94:23 Encore 115:23 118:10 endeavor 134:20 ended 32:12 energy 10:5 94:24 95:8 95:9 96:7,8 115:23 116:2,4,5 118:10 156:20 164:2 187:8 189:6,7,9 199:23 268:15 270:12 enforce 20:17,20,25 45:21 enforcement 273:13,16 engage 19:17 28:4 engaged 19:8 46:3,9 engaging 19:3 engine 16:12,15 81:14 88:24 89:4,11,16,19 89:22 90:3,21,25 91:5 116:16,21 117:8 119:20,24 126:22 127:12,14 131:21</p>	<p>133:15,16,19 135:5,9 147:15 148:4,7,8 158:22 167:18 174:16 174:19 221:9 227:6,8 227:22 228:2,4,5,7,13 229:5,9,24 230:19 265:7,12,13,13 266:21 267:2,3,8 268:18,25 269:12,13 269:15 273:2 engineer 23:4 76:5,10 77:10 78:20 79:6 164:15 166:22 engineering 26:2 27:2 75:6,11 81:10 123:19 123:20 128:21 243:3 engineers 78:22 125:23 143:13 engines 15:9,15 88:17 89:9 91:7 94:25 96:8 96:9 99:2 116:25 117:2,3,5 118:10 127:13,14 129:7 131:18 134:9 147:18 152:21 153:9 158:4 158:25 159:6,25 167:25 169:10 200:4 211:19,24,25 217:23 217:25 218:1,5,7,9,18 218:22 219:11,14,15 219:15,20,23 220:4 221:12,18 222:3,18 222:20 223:7,11 224:5,11 228:9,16 229:12,14,15,21 230:1,8 237:4,10,16 237:20,24 268:24 270:5 272:6 enter 39:6 155:10 171:1 entered 13:21 55:15 96:22 155:12,13 209:2 256:19 258:1 262:4 268:7 enterprise 157:16 entire 19:13 38:23 40:14 123:10 218:5 272:14,22 entirely 198:1 entirety 228:22 272:15 entities 34:22 40:11 41:4,8 46:20 52:6 53:4 68:6 70:20 entity 21:21 22:9,14 32:8,11,13 42:24 46:7 46:8 53:24 54:18 55:5 59:2 68:4 251:1 251:5 entry 202:20 Environ 243:12 Environment 26:1 environmental 5:8,12</p>	<p>20:1 22:23 23:19 62:16 75:11 76:5,10 76:14,17,21 77:10,15 77:15,24 80:10 81:10 85:5,5,16 87:3 122:14 128:21 134:5 135:17 137:2,5 138:21 140:20 141:6 142:4 142:23 166:22 190:9 190:9 230:18 243:3 259:22 EPA 6:12 99:10 101:9 equipment 39:1 88:11 88:13 128:6,10 129:21 131:20 159:20 217:22 266:19 equity 30:6,22 31:22 44:5,21 equivalent 184:19 186:14 error 153:19 ESG 13:21 14:2 104:8 104:20 141:1 essentially 19:4 28:6 34:2 65:14 establish 5:14 6:16 186:2 243:3 established 26:18 28:1 28:3 93:6 estate 29:22 30:2 34:19 43:18,23 44:2,16 45:13 52:12 53:13 estimate 31:23 44:5,24 170:1 260:18 estimated 147:16 260:2 estimates 23:12,13,15 39:12 40:2 41:23 63:23 estimating 64:4 118:7 174:19 178:13 270:4 estimation 127:2 164:19 et 127:22 EUGENE 1:9 Eve 81:23 event 41:6,15 64:8 202:19 everybody 5:11 95:21 evidence 6:9 11:21 13:25 17:18 18:11 22:1 23:18 24:7,12 35:5,7 118:20 157:13 184:25 225:21 226:1 244:15 exact 22:11 58:7 97:10 192:24 exactly 47:3 48:1 59:24 66:8 68:8 79:22 85:1 89:6 91:20 152:11 156:23 166:18 204:5 examination 27:9 62:24 66:20 71:12</p>
--	---	---	---	---

74:12 183:5 188:3 226:19 271:3 examine 7:10 62:24 89:23 example 212:17 exceeded 66:6 exception 92:16,17,20 146:20 exchange 163:22 164:1 205:2 exchanged 268:5 excise 173:5 excluded 25:16 exclusive 203:5 exclusively 63:25 64:13 excuse 24:21 34:4 122:5 210:11 224:2 234:16 235:16 237:4 254:20 excused 74:6 273:23 execute 23:25 executed 31:5 45:12,23 209:11,13,16,20 210:4 executive 157:16 executory 53:12,16 exert 33:6 exhaust 229:18 exhibit 21:2 34:24 36:4 36:8 57:19,20,21 60:20 83:9,10,16,25 86:13 87:16 91:11 101:25 113:18 119:6 119:8 124:1 157:3 162:16 163:16 165:3 184:24 185:17,20,24 201:13,21 209:23 210:1 220:9,12,14,15 223:13 224:16 226:14 231:6 236:16 239:7 242:8 243:19 247:7 247:24 248:20 249:22 249:23 253:14 255:24 256:11 exhibits 35:6,9 83:9 100:1,3 121:1,11 123:6 124:15 226:16 226:20 263:1 exist 147:12 149:2 151:12 existed 147:12 151:13 existing 13:15 99:2 106:16 109:23 116:16 156:15 206:13 211:22 exists 4:2 12:4 expand 81:11 expanded 82:2 129:20 expanding 81:16 90:15 expansion 13:8 15:18 111:18 expect 8:8 93:14,16 125:12 132:5 162:1,3	162:5 216:21 expectation 70:14 98:23 226:5 expected 25:2 39:13 159:8 expenditure 168:7 expenditures 129:4 132:5,9,22 expense 40:2 127:22,24 128:4 159:14,16,20 191:15 expenses 63:6,23 64:5 127:22 128:7 130:24 131:2 163:5,7 165:16 177:22 191:12,16 193:5,13 195:19 196:4 experience 19:12 29:8 40:3 55:1,23 63:17 75:23 78:21 92:25 95:15,25 96:12,13 105:23 108:9 116:3 122:12 123:8 125:11 159:4,23 176:16 experienced 159:5 213:17 223:6 expert 5:9 24:24,25 26:9,12 98:21 117:7 117:12,13 164:15 expiration 212:11 expire 103:11 expired 103:13 explain 160:7 explained 40:1 exposure 19:12 260:3 260:10,20 expressing 72:24 Expressway 76:14 extend 40:12 41:25 42:3 extended 114:24,24 extent 4:3,6 10:10 17:19 33:25 236:9 253:20 258:21 259:3 extract 94:8 139:18,22 152:6 extraction 94:14 137:9 139:12 149:22,24 extremely 4:8 EZLinks 73:15 e-mailed 210:1	189:6,17 190:1,14,18 190:19,20 191:2 199:12 210:9 211:18 212:2,9 216:14 217:16 218:6 221:7 227:24 237:11 239:14 241:24 242:6 257:22 261:17 facsimile 122:18 fact 5:11 12:4 13:17 14:1,12 16:20 20:10 20:16,18 22:3 26:13 26:19 45:11 49:7 51:23 61:20 65:22 107:22 122:14 130:18 136:21 140:7,15 144:5 145:13 154:2 159:16 166:6 183:19 194:8 204:25 221:15 228:25 230:12,22 237:23 245:1 259:4 267:7 271:20 273:13 factor 4:1 23:1 127:19 158:23,23,24 159:1,2 163:12 factors 159:2 Fahrenheit 148:24 fail 20:4 148:25 failed 46:15 137:14 227:25 269:13 failure 18:24 19:10 221:18 222:3 228:6 248:6 failures 19:14 fail-safe 269:14 fairly 31:22 38:7 125:22 137:21 143:9 faith 245:22 fall 98:24 167:19 168:6 228:24 229:1,22 272:15,23 Falls 76:19 familiar 52:7 57:4,8 184:3 familiarity 34:1 fantastic 86:7 far 8:6 23:13 29:9 59:21 62:8 93:4 96:18 106:7 120:17 138:24 153:22,22 155:20 156:12 163:12 165:2 172:2 203:8 215:19 267:1 270:11 270:19 fares 94:21 fast 171:14 faster 42:1 favor 102:15 256:19 feature 222:14 features 120:4 128:1 129:9 149:8,9 153:25 February 1:6 87:21	121:17 122:5 220:25 235:9,14 236:12 237:12 269:6 274:5 fed 156:3 fee 131:3 feeding 156:17 feels 69:11 fees 128:6 feet 120:7 139:14,17 fell 45:15 198:18 fellow 16:5 fellows 14:14 78:10 79:3 272:17 FERK 199:10 field 80:4 120:3 134:8 137:21 147:23 148:14 218:2,23 fields 79:10 fifty 105:13 fighting 136:1 figure 159:1 174:18 184:23 figures 49:12 165:10 file 14:19,20,21 101:21 103:8,11,14,23 105:4 106:5,20 107:10,17 108:4 212:21 271:11 271:13 filed 46:14 67:12 99:22 101:5,6 102:11,12 106:2 120:21 121:7 122:1,8 232:16 273:17 files 84:21 filing 99:20 103:17 117:17 122:6,7,12 180:1 fill 139:5 filling 12:24 111:24 166:20 final 9:6 14:12 77:1,2 115:7 125:11,15 209:6 212:15,25 217:9,10 229:6 256:14,16 264:11 finalize 130:12 finalizing 209:5 finally 11:14 120:24 214:9 215:8 finance 75:15 204:19 financial 18:21 33:7 39:9 42:22 62:25 75:18 192:19 194:2 207:8 financials 32:10 financing 123:22 find 58:7 100:16 113:24 134:11 150:17 172:13 finding 225:22 fine 35:16 58:10 64:23 71:23 88:11 113:22	115:18,18 119:9 138:15 176:23 177:4 197:20 219:9 220:10 230:5 246:12 finish 13:8,12 15:18,19 25:8 75:9 102:1 148:3,7 153:3 finished 10:15 109:8 finishing 110:19 fire 14:25 117:8 137:8 137:15,17 152:12,12 152:15 227:23 228:2 firm 81:10 85:9 86:8 243:3 264:6,12 first 7:1 9:19 16:24 24:19 28:18 36:18 37:22 45:9 56:5 80:25 81:19 99:5 114:5 115:24 126:5 126:12 156:14 160:4 161:3 164:4 167:1 171:24 173:8 199:5 208:8 217:2 221:24 256:12 260:12 fitting 137:11 five 66:23 76:5 103:13 111:23 119:16 137:21 166:19 171:16 218:8 219:11 five-and-a-half 222:21 223:8 five-year 10:23 fix 138:2,6 148:1,2,5 149:11,14 222:11,16 273:2 fixed 97:2 138:5 222:15 272:7,9 fixing 128:18 flare 237:14,15,17 238:1 flares 94:11,20,22,23 190:20 flaring 94:24 flat 47:20 flex 128:18 floor 62:1 flow 32:6,16 33:8,9,11 136:18,22 150:4 160:1,13 162:3 164:24 166:6 178:19 flowmeter 135:18 138:16 flowmeters 135:22 136:7,9 focused 123:21 focusing 267:2 follow 103:24 105:5 following 56:3 227:6 252:9 footnote 258:14 footprint 104:14,18 foreclose 205:14
---	---	---	---	---

<p>FOREGOING 274:7 foresee 113:10 foreseeable 84:6 183:6 forgive 266:6 forgot 266:7 form 202:22 215:2 223:21 forma 39:11 41:19 62:24 126:7 131:11 131:16 136:21 157:9 158:12,13 159:18 162:18,24 165:19,23 177:25 formal 150:23 195:15 formas 39:24 41:17 42:2 63:9 123:5,9,10 123:21 125:8,16 136:25 151:12 158:9 168:16 192:1 269:25 formed 19:1 former 19:18,22,23 Fort 145:3,6,13,20 188:13,14 Fortelka 78:17,18,19 80:15,18 81:13 82:4 82:12,13 90:10,17 95:23 130:25 181:7 266:3,8 forth 11:23 251:24 252:2 forward 12:14 15:19 17:8 89:4 136:4 157:17 164:1,9 219:6 272:2 Foth 25:25 found 254:15,25 255:12 256:8,24 257:7,10 260:3 271:10 foundation 66:2 157:12 225:2 231:16 245:1 245:20 four 18:12 39:13,21 63:6 81:2 102:22 107:7 108:3,8 112:24 130:7 144:18,20 158:19 162:11 165:11 171:12 205:1 212:19 215:8 225:7 fourth 210:18 four-inch 150:8 four-month 158:20 fractured 138:1,2 frame 38:9 105:24 107:5 109:4 168:7 frames 105:22 framework 177:12 free 32:6,16 47:16 49:1 233:18 frequently 82:3 90:16 fresh 196:12 267:15 Friday 268:7</p>	<p>fringe 266:14 front 37:2 57:23 60:24 fronting 194:19 frugal 161:7 fuel 95:14 137:16 143:15 147:14 156:12 156:21 Fuels 264:6 full 109:4 131:18 139:6 152:21 268:23 function 17:18 86:11 149:12 functionally 153:25 functions 79:6 fund 33:12,17 38:3 39:21 40:6,16,19 41:18,21 50:1,3 66:6 66:10 69:15 194:3 206:25 207:20 fundamental 134:9,19 134:23 fundamentally 7:18 funded 49:22 funding 21:24 23:16 34:9 206:19 264:24 265:4,7 267:10,12,13 272:12 funds 11:5 22:3 33:17 115:4 117:23 134:3 168:12 191:22 192:8 192:10,11 193:4,13 193:19 195:18 196:8 267:19 further 70:16 91:8 212:13 259:15 263:22 273:20 furthermore 207:6 215:7 fuse 148:24 future 4:2 6:5,6 7:22 21:17,24 22:24 23:7 24:7,9,10,15 84:6 117:15 141:22 183:7 192:4 209:6 futures 164:2</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gained 253:17 gaining 258:23 gap 250:5 gapping 88:20 garbage 104:17 143:19 151:23 Gary 146:16 274:7 gas 10:7 12:8,18 13:2,4 13:7,13,14,15,16 14:6 14:16 15:10,24 16:10 19:6,6 29:7,22 32:5,8 32:9 33:6,10 34:7,20 41:5 43:19 47:1,6,8 48:6 49:5,9,11 55:2 55:24 58:15 59:1</p>	<p>61:14 62:14 63:17 64:5 69:1 91:5,6 92:19 93:22 94:4,5,6 94:8,12,15,16,17,18 94:19,24 95:2,5,8,11 95:16,16 96:2,5,10,13 96:20 97:1,3,16,22 104:2,4 116:14 117:7 124:16 128:15 139:3 139:7,18,23,25 143:6 143:7,11,21 144:2,11 147:17,18 149:22,23 150:4 152:6,8,10 153:2,10 154:17,21 155:23 156:1,2,17,18 156:19 163:9,15,17 164:13 187:8,24 188:6 189:5,8 190:2 190:13,17,20 191:9 205:9 218:2,3,9 222:12 223:3 225:11 227:23 228:1 229:4 236:25 237:3,24 239:13 240:11 242:6 242:12,16,18 246:18 246:20 247:3 249:11 252:25 253:10 254:15 254:19,20,20 256:3 257:3,21,21 259:24 261:1,4,6,14,19,21,24 263:25 264:3 273:4,7 gas-to-electric 200:3 gas-to-electrical 199:23 gas-to-energy 23:21 62:20 77:13,23 79:5 181:25 187:20 188:9 188:19 189:16,25 191:1 200:11 211:18 217:16 241:23 GC 203:10 GCCS 10:8 109:8 175:6 Gene 86:19,22 general 5:7,10,14 75:12 76:1 87:19 92:23 94:2 112:18,20,23 129:24 133:8 135:13 180:18,21 202:15 212:17 242:21 252:23 260:21 generally 10:13 21:13 105:16 107:5 108:8 109:19 125:10 182:2 183:11 205:5 223:19 225:6,20 232:12,12 239:15 262:21 264:24 generate 46:17 generating 126:2 182:6 Geneva 76:25 gentleman 23:18 George 1:14 3:7</p>	<p>Georgia 75:8,19 76:3 123:23 146:14 getting 21:20 90:7 119:5 136:14 193:7 193:19 249:4 give 8:5 25:2 128:16 182:9 201:18 216:7 217:8 252:11 263:8 given 8:9 24:13 197:18 198:1 233:16 249:15 gives 170:5,7 214:8 giving 25:8 250:8 Glad 152:7,9 GM 125:22 GNO 145:8,17 go 5:24 7:23 10:16 11:2 11:12,20 12:14 18:16 21:10 27:6 29:7 32:7 32:7 44:13 50:8 71:10 79:7 83:7 84:16 92:4 93:16 97:1,8,21 98:10,15,23 106:18 107:16 108:11 108:21 111:2 121:10 124:9 126:2 131:21 135:24 136:6,25 137:25 140:18 141:23 146:13 149:13 151:11 156:1 157:17 162:21 162:22 169:24 174:20 176:20 179:1 188:10 192:1 199:5 202:7,21 204:5 206:20 212:24 215:15 221:8 223:3 223:15 226:20 227:15 233:22 234:2 272:2 God 93:17 goes 7:25 75:25 155:23 159:21 168:23 230:16 going 7:23 8:3,24 10:9 11:1,5 12:5,6,25 13:4 13:5,6,8,11 15:17,19 16:9,15 17:18 18:12 23:10 29:7 35:16 39:2 40:7,11 42:6 46:13 58:4 64:21 74:8 79:19,24 80:25 81:11 82:11 83:10 85:11,22 87:1,22 89:2 89:8,17,22,23 90:4,12 97:7 98:20,22 100:10 103:12 108:13,14 109:2,7 111:23 116:12 120:25 122:20 129:1 130:25 131:13 135:23 137:12 148:5 148:6,17 149:10,14 151:3 152:10 153:5 153:13,16,21 154:17 156:1 160:7 166:10 166:25 167:5,13 168:2,17 169:12,18</p>	<p>170:3 174:4 176:20 186:3 190:5 193:17 194:10 201:21 204:17 208:5,9 211:5 215:9 215:11,19 216:10 217:2 226:11 228:21 228:21,24 229:4 245:19 252:2,12 253:17 255:3,7 264:6 264:7,9,12 271:16 272:6,14,23 273:7 going-forward 42:5 154:8 Golf 73:15 good 3:3,6,10,14 58:2 60:1 87:12 88:8 92:21 139:9 155:19 156:9 172:2,9,11,21 179:2,4 245:22 gotten 173:9 188:16 264:7 government 204:13 governmental 118:21 governs 107:14 grade 13:14 Grading 253:4 257:4 259:17 graduated 76:2 grant 5:18 8:6 216:3,20 granted 143:12 215:10 grantor 28:2,16 54:21 184:6 grants 28:14 grants 53:24 213:14 grate 222:8,13,17 Greater 145:8 188:24 greatest 219:15 Green 264:6,13 Greenblatt 28:20 29:10 29:11 38:22,24 51:1,3 51:16 52:18,21 53:6 53:19 54:14,17,19 56:6,17,20 59:14 62:5 207:3 Greenblatt's 56:12 greenfield 200:3 Gregory 1:12 3:4 grid 154:7 ground 112:7 150:9,10 grounds 100:13 157:12 236:18 244:19 guarantor 184:8 guarantors 184:1 guess 37:16 83:7 86:12 144:9 151:10 257:18 guy 6:12 266:24 guys 92:18,18 153:3 264:10</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>habit 8:19 half 115:9,11</p>
---	---	---	--	--

<p>halfway 75:10 119:23 267:8</p> <p>hampered 265:4</p> <p>hand 53:3,4 122:18</p> <p>handful 12:23</p> <p>handle 82:19</p> <p>handles 80:9</p> <p>happen 12:5,18,25 13:4 14:7 16:9 119:15 168:17 237:19</p> <p>happened 4:16 56:4 72:21 139:10 143:3 180:14</p> <p>happening 110:18</p> <p>happens 4:5 115:2 118:16 152:11 168:16 169:6,10 217:3,4 252:15</p> <p>happy 5:13 204:5 226:8 233:21 253:25</p> <p>Harbors 77:5</p> <p>hard 8:25 245:13</p> <p>Harry 235:9,23 238:11</p> <p>Haven 146:15 190:7,15 190:18,21</p> <p>hazardous 77:3</p> <p>hazards 22:24</p> <p>head 17:12 69:3 88:21 90:8 129:8 162:12 266:23</p> <p>headed 17:23</p> <p>header 120:7 218:2 228:23</p> <p>headers 94:14 175:13</p> <p>heads 88:25 89:23</p> <p>health 129:14 266:15</p> <p>hear 3:20 5:13,21 8:17 101:20 181:18 233:21</p> <p>heard 25:7 27:14,21,24 33:21,24 93:21 95:2 173:12 216:22 255:3 271:9</p> <p>hearing 69:21</p> <p>hearsay 224:25 231:15 236:17 238:24 244:6 244:22 247:12</p> <p>heart 150:3</p> <p>heat 137:16 152:12</p> <p>hedge 69:7</p> <p>hedged 69:14</p> <p>hedging 69:5</p> <p>height 104:15</p> <p>help 57:5 123:17 136:19 148:12 226:7 240:18 249:6</p> <p>helpful 113:21 188:12 197:5 250:19</p> <p>Henderson 214:14,16 235:10,19,23 236:11 238:11 239:18</p> <p>Henry 163:16</p> <p>he'll 79:7 81:7,11</p>	<p>high 95:22 97:22 139:20</p> <p>higher 159:21</p> <p>higher-dollar 129:9</p> <p>highest 138:24</p> <p>highs 49:17,20</p> <p>highway 94:22</p> <p>hill 152:15</p> <p>Hillside 241:24 242:6 242:12 256:4</p> <p>hire 112:18</p> <p>hiring 41:11</p> <p>historic 49:17,19</p> <p>historical 163:5</p> <p>historical-based 159:16</p> <p>history 3:24 19:4 22:7 23:5 69:23,25 116:6 128:2,11,11</p> <p>hit 49:19 112:7 228:1</p> <p>hold 57:21 124:3 207:24 238:13</p> <p>holding 29:21 43:14</p> <p>holdings 43:14,15 46:25</p> <p>holds 14:9 29:21</p> <p>Honestly 53:7</p> <p>Honor 3:3,7,10,13,14 3:22 4:7,12 6:17 8:13 8:14,18 14:25 18:14 18:19,25 19:7,19,25 20:5,14,16 21:3,6,9 25:13 26:15 27:7 34:25 35:15 42:15 58:4 59:4 60:4 64:17 64:24 65:7,13 66:18 70:15 72:5 91:11 92:5 100:1,12 113:14 119:9 121:19 124:8 126:10 136:24 157:3 157:11 162:15,22 178:22 185:5,22 186:15 196:25 201:14 220:8 223:14,14 224:16,25 225:16,17 225:18,23 226:11 231:9,14 232:2,4 233:12,25 234:1 236:18 238:17 239:8 240:7 243:19,20 244:6,19 246:12 247:8,9 248:2,20 254:7 255:24 258:12 258:18 263:6,22 264:16 271:2</p> <p>HONORABLE 1:9</p> <p>honored 68:19</p> <p>Honor's 71:11 255:4</p> <p>hook 116:16</p> <p>hooking 154:7</p> <p>hooks 94:13,18</p> <p>hope 156:18 158:18</p>	<p>206:8,10</p> <p>hoped 17:21 183:6</p> <p>hopefully 93:10 148:19 151:4</p> <p>horizon 13:10</p> <p>horizontal 111:18</p> <p>hoses 128:18</p> <p>Hotel 36:1</p> <p>Houghton 75:7</p> <p>hour 125:6 126:25 157:22 230:1,9,11</p> <p>hours 221:9</p> <p>house 161:6</p> <p>housekeeping 128:14</p> <p>Hub 163:17</p> <p>hugely 16:23</p> <p>human 153:19</p> <p>hundred 49:10 105:13 123:15 125:20 175:24 192:22</p> <p>hydropower 78:16</p> <p>hypothetical 142:16</p> <p>H&M 32:9 33:5,8 34:20 43:19 47:6,8 69:5,19</p> <hr/> <p>I</p> <p>IAC 122:16</p> <p>idea 17:8 100:16</p> <p>identified 26:11 47:25 53:23 58:14 200:21 220:14 258:11</p> <p>identify 7:15 20:24 55:5 185:2</p> <p>IEPA 3:20 5:8 6:4 7:25 14:21 16:21 17:9 24:2,5,8 101:18 104:9 120:23 131:3 134:13 134:15 135:18 136:3 137:23 150:17,20 173:10 176:10 211:20 213:5,14,21 214:19 215:25 216:2,15 218:10 220:25 224:22 225:10 235:11,20 240:3 241:5,15 242:2 242:5 243:16 244:12 245:3,6,7 247:15 249:20,25 250:7,16 250:25 251:6,17,20 253:7 271:5</p> <p>ii 202:21</p> <p>IIT 4:24 5:2 6:3,21 9:1 11:22,24 12:2,18 13:2 14:7 15:2,3,25 18:2 18:20,21 19:1 20:4 21:12,16,18,20,24 22:4,7,14,19,24 23:13 23:14 24:6,7,14 33:13 34:10 37:9,17,24,25 39:12,22 41:9,19,23 42:1 49:23 50:14</p>	<p>53:23 54:8,18 55:1,5 55:17 57:20,21 58:14 60:20 62:7,18 63:14 64:8 65:20,23 66:6,13 82:10 84:10,23 87:19 92:10 101:21 102:12 103:5,6 105:5,8 111:1 114:7 119:25 127:25 130:20 142:9 145:11 145:13,16,19,23 146:4,10 147:1 155:16 160:6 177:8 177:22 181:3,10,16 181:19,20 184:12 185:17 187:7,12,19 188:4,14,16,19,25 189:5,14,25 190:13 191:8,18,22 192:1,7 192:13 193:4,13,25 194:12,22,24,24 195:6,15 196:2,4,8 197:11 198:3,5,13,23 199:2,3,7,16 200:17 200:25 201:9,15,24 202:12,20,23 203:1 203:22 204:17 205:10 205:13 206:3,6,12,16 208:5,23 209:8 211:17 212:23,23 215:11,14,17,20,22 220:15 260:25 261:14 262:4,8,23 263:5 267:10,12</p> <p>IIT's 23:15,20 24:4 149:8 185:21 194:5 195:18 199:22 201:20 202:19,20 204:14 216:15</p> <p>Illinois 1:1,5,13 3:5 6:12 8:23 9:11,12,12 23:19 27:14,22 33:23 38:20 53:23 61:13 69:22,24 74:22 75:9 75:19 76:25 93:5 99:10,16,21 101:7,9 102:16 122:15 123:24 130:2 146:16,17,17 171:22 172:5,23 173:4,13 174:1,5 182:12 189:13,19 217:12 235:24 246:22 259:10 260:4,10,19</p> <p>imagined 253:16</p> <p>immediate 150:20</p> <p>impeach 65:8,9 66:2</p> <p>impeachment 197:1 233:22</p> <p>impediment 117:18</p> <p>implement 23:11</p> <p>implication 21:22</p> <p>implies 153:13</p> <p>important 63:13</p>	<p>importantly 24:1</p> <p>impose 210:22,25</p> <p>impression 119:5</p> <p>improper 197:1 225:21</p> <p>improve 261:4</p> <p>inadequate 41:16,21 42:2</p> <p>inadmissible 157:13</p> <p>inauthentic 244:16</p> <p>incident 223:23</p> <p>incidentally 52:23</p> <p>incinerator 77:3,4</p> <p>inclined 3:19</p> <p>include 32:19 120:3 205:8</p> <p>included 126:14 175:1 177:21,24</p> <p>including 4:5 17:10 22:2 23:22 53:5</p> <p>inclusively 222:18</p> <p>income 32:21 43:3 48:16</p> <p>inconsistent 66:3 233:22</p> <p>incorporated 171:25</p> <p>incorrect 207:21 251:11,12</p> <p>incredible 78:14</p> <p>incurring 196:4</p> <p>independent 26:16 63:21,21 143:13</p> <p>Indiana 146:16</p> <p>indicate 225:5 250:17</p> <p>indicated 13:22 85:10 98:13 112:15 118:18 172:15 211:11</p> <p>indicates 13:11 121:15 258:14</p> <p>indicating 10:4 11:4 250:8</p> <p>indication 93:11 250:14,19 252:12</p> <p>indirect 43:23 44:1,20 46:25 48:5</p> <p>indirectly 51:5</p> <p>individual 7:16 162:14 266:19</p> <p>individually 1:14 3:8 19:22 26:25</p> <p>individuals 41:4,8 181:9</p> <p>Industries 1:17 3:11 9:10 54:2 166:23 272:19</p> <p>industry 19:13 29:9 92:23 94:3 159:4 270:11,16</p> <p>infiltrating 143:19</p> <p>inflate 72:7</p> <p>inflation 128:3 157:23 165:10</p> <p>influenced 25:6,10</p>
---	---	--	---	---

information 6:15 39:9 63:12 217:9 informational 124:15 informed 228:18 infrastructure 26:1 99:2 110:6 116:13,14 116:14 170:2 200:2 218:4 229:16,18 inherited 104:21 initial 127:5 158:17 167:15 initially 126:13 143:10 injection 95:10 97:23 inoperable 219:24 220:2,5 inside 139:15,15,16 149:6 install 19:16 89:25 117:6 135:24 175:10 199:23 213:12 237:16 266:23 installed 56:8 143:5,7 175:11 237:18 installing 136:1 141:10 installs 211:18 instance 17:22 81:3 institution 9:3 insurance 129:15,23,25 130:3,15,19 266:15 insured 130:4,4 intended 37:13 intends 260:25 intent 114:15,15 199:23 241:7,8,16 250:8,22 252:19,22 254:4 intention 186:2 interconnect 116:17 interconnected 118:11 interest 8:20 10:11 13:23 14:1 20:8 31:11 32:13,22 38:25 41:17 43:18,19 46:25 47:6,8,9,12 48:6,11 48:19 52:4 97:18 98:8,9 115:6,6 161:2 168:24 169:11,17 170:18,20 178:15 197:14 205:3 interested 36:4 165:8 interests 33:4,5 205:8 interim 141:21 192:12 interlocutory 256:13 international 81:9 interpretations 87:10 interrogatory 7:16 interrupt 30:18 interval 204:4 introduce 231:23 introduced 225:3,5 introduction 225:18,20 intrusion 153:7	intuitive 78:22 investigate 62:9,13 investigated 172:18 208:11,14 investigation 64:2 207:18,24 investment 1:13 3:5 8:23 27:15,22 38:20 43:15 53:23 61:13 69:23,24 74:22,25 93:5 99:17,21 101:7 102:16 130:2 174:5 182:12 187:4 investments 29:22 30:2 32:5 34:15 132:1 133:2 invoice 269:19 involve 261:3 involved 20:18 22:10 45:24 81:4,6 105:10 113:2 259:4 involvement 40:20,25 42:6 involves 34:6 involving 20:8 54:1 69:6 Iowa 145:6 188:13,14 irrelevant 5:3 59:3,8 71:20 72:8 232:2 issuance 212:25 213:1 issue 4:15,18 6:3 21:1 21:18 24:2 54:1 100:15 103:14 121:12 130:18 133:15 134:19 135:1,7 137:25 138:16 140:13 143:14 143:17 147:14,19 150:19 152:4 153:7,8 153:11 171:18 199:19 205:9 215:8 222:7,10 225:24,25 252:19,21 issued 99:10 103:10 106:4,7 107:14 174:1 212:15 214:21,23 239:4 240:15 241:3 245:3 251:2,5 issues 4:9 7:11 9:13 10:18 17:16 23:22 24:1,14 27:2 120:3 134:5,23 135:16,17 138:16 144:17,21,24 145:5,17 146:2,11 147:1,8,12 149:2 150:20 151:12,16 152:20 153:4,15,16 174:22 188:17 190:24 235:21 250:25 item 135:14 207:7,7 252:1,1 items 16:18 23:9 117:24 138:12 140:10 264:20 266:17 271:7	ITT 211:19 <hr/> J <hr/> Jahelka 2:6 11:8,8 24:21 27:8,13,17,21 44:17 57:3 60:13 63:16 65:2,18 70:18 207:1 Jahelka's 187:2,16 207:6 January 9:21 21:8 65:4 90:21 171:20 198:17 227:17,19 229:24 233:2 234:16,16 237:21 268:19,19 269:1,4,8,11,21 270:23 272:5 Jay 1:14 3:7 243:12 Jenbacher 117:5 158:22 211:24 260:8 260:12 Jenbachers 159:7,8,9 159:11,21 job 86:7 88:11 139:9 247:22 jog 52:25 jogs 60:16 John 2:8 12:16 29:3 39:11 69:25 70:2,11 74:11,16 144:10 Johnny 181:7 Johnson 79:14,21,22 80:16,19 181:7 Jordan 1:12 3:4,22 5:6 5:20 6:25 7:1 8:13,22 9:5 20:6,20 21:6 24:19,20 25:13,19 26:4,10,15 27:6,7,10 27:18,20 31:8,9 32:2 32:4 34:25 35:4,8,15 35:21,25 36:5,12,15 36:19,24 37:1,20 42:14 49:21 55:12 59:3,8 65:7,12,18,21 66:17,18,21 68:20 70:15 71:20 72:5 74:7,8,13 83:18,20 84:12,16,18 91:10,13 92:4,6 99:25 100:4,8 100:9,19,22 101:1,2 101:25 102:2,3 113:13,19,25 114:1,4 114:9 119:6,9,11 121:12,14,19,22,24 124:5 126:9,13,16 136:24 137:1 150:11 157:2,5,19 162:15,17 162:21,23 163:2,3 178:21 183:5 185:22 185:25 188:3 190:23 196:25 197:16,19,21 201:23,25 202:3	209:17,19,25 210:6 210:13,15,24 211:3,7 211:10 224:24 225:17 231:14,18 232:1 233:16 236:17 238:17 238:22,24 239:1,8 240:7 243:20,24 244:6,18,22 245:24 247:9,12,18,21 258:12 259:4 262:3 263:1 264:20 271:1,2 271:4 273:19 Judge 21:1 53:1 judge's 35:12 judgment 256:15,16,18 July 220:5 221:16 227:7 jump 148:17 juniper 149:17,18,20 149:21 150:23 June 232:11 233:7 234:17 J-a-h-e-l-k-a 27:19 <hr/> K <hr/> Kansas 146:14 keep 103:9 107:18 167:5 194:10 223:4 keeping 4:18 kept 246:7 Kewanee 146:6,7 189:19 kilowatt 125:6 126:25 157:22 159:9 kind 12:12 34:25 48:3 84:16 86:13 100:19 100:23 116:3 133:7 135:5 140:13 143:17 217:25 271:25 kinds 18:1 Kiwanis 182:17 knew 61:14,16 know 7:4,22 12:11 14:17 17:14 26:4,22 29:2 34:18 49:18 59:19,21 62:8 64:21 67:9 69:12 71:21 73:22 82:8 85:7 88:9 88:10 95:12 96:24 98:11,14,21 99:5 101:16 104:7 109:11 110:25 113:16 116:4 117:21 120:17 123:19 125:11,16,19,22 128:16 132:6,19,23 134:15,18,21 135:5 135:13,14 136:2 137:11,18 138:7,15 138:22,25 139:20 140:15 141:8,15 142:12,15 147:16 148:2,18 149:6,18	152:6,23,24 153:13 153:19 154:4 155:20 158:16 159:5,6,7,8,13 160:18 161:5 162:2 162:13 163:25 165:9 167:18 168:18 169:25 170:22 171:5,20 172:3,6 173:3 174:2 176:10 180:19 183:15 184:5,6 185:14 187:3 193:2,16 196:13 201:9 203:7,12,14 206:13 207:22 208:15 212:15,16 213:7,20 214:25 215:14 216:9 217:2,3 220:2 221:23 222:18 224:13 226:19 226:23 228:2 230:15 230:22 232:14 238:18 239:20,21 240:2,6,16 240:21,22,23 241:2 242:9 243:4,14,17 245:24 246:2,4,5,9,10 250:12 255:15 257:12 257:16 258:22 265:5 266:20,22 267:1 269:2 272:10 273:3 knowing 165:8 207:22 245:10 knowledge 7:16 62:11 92:22 180:23 187:7 187:11 216:23 234:24 253:24 known 61:18 199:24 207:1,3 223:23 knows 14:25 158:6 Kujaca 1:18 3:14,15 5:23,25 6:10 21:5,9 24:17 25:17 26:8,13 26:19,24 27:5 64:18 65:1 66:4,16 264:14 264:16,18 270:25 <hr/> L <hr/> Laboratory 76:22,25 lack 133:4 264:24 265:6 lacked 17:3 laid 39:19 245:1,21 lakes 143:18 land 85:7 151:8 landfill 4:14,15,17 5:12 5:16 9:9 13:24 14:1 22:13,20 23:4 24:2 29:7 55:2,24 58:15 59:1 61:14 63:17 64:6 76:13,15,19 77:12,22 79:5 91:5 94:8 95:8 96:3 104:7 104:13,14,16 120:4 128:15 134:12 139:1 139:5,15 140:16,24
--	---	---	---	---

143:6,18,21 148:21 149:4 151:9,19,22 152:6 156:16,17,18 157:24 164:13 174:20 181:25 182:1 187:8 187:20,24 188:4 211:19 217:16,17,20 222:9,10,13 223:2 224:23 226:4 228:22 229:21 230:20 240:11 241:24 242:13,16 246:17,19,19,22 248:13 249:12 253:2 253:7 254:16,20,22 256:5 257:5,22 259:25 261:18 263:25 264:8 265:9,10 266:20 268:15 271:7 landfills 7:12 9:11 19:5 20:2 21:24 22:23 33:22 34:1,7,8 55:7 81:2 87:4 94:23 198:5 254:12 language 201:3 203:4,6 Lansing 76:2 145:22 146:2 189:13 191:5 large 85:8 119:23 163:25 largely 109:13 129:4 153:5,12 larger 86:8 late 51:24 78:9 167:19 167:19 227:13 lateral 141:10 148:16 laterals 94:14 175:13 LAW 60:6 lawsuit 259:13,19,22 260:5,8,12,19 lawyer 59:20 180:10,20 203:4 lawyers 172:23 lay 66:1 leachate 120:9,9 137:9 139:12,14 143:19 149:25 lead 80:10 leading 197:24 learned 34:2 187:16 lease 6:1 21:14 leave 25:3 59:14 167:13 274:2 leaving 32:15 left 113:16 162:22 169:3 170:20 legal 22:8 72:24 241:6 241:8,8,16 250:9,22 252:12,19,22 254:4 lend 37:12 lender 40:24 65:22 160:9,21 168:22,23 169:17 209:7 lenders 161:10	length 52:4 Leon 28:20 50:25 51:3 letter 202:22 217:4 250:1,7,14 letterhead 245:6,14 let's 36:12 43:22 48:13 52:5 94:4 103:21 109:25 133:9,11 184:22 201:11 223:13 231:5 236:16 243:18 247:7,13 248:19 256:11 level 76:12 123:22,23 139:21 222:5 levels 75:18,21 139:15 139:16 143:20 221:19 222:4 LFG 262:6 LFR 81:9 84:11 85:1 86:7 liabilities 34:15,18 66:6 liability 129:24 liable 260:3 Liberty 15:22 licenses 238:13 lie 129:4 lieu 211:24 life 70:12 93:18 162:2 liked 17:5 likelihood 63:10 186:2 limine 3:19 4:13 8:6 limit 36:11,12 limited 31:15 85:14 134:3 140:22 142:3,3 limits 103:9 Linchfield 7:12 Linda 1:18 3:15 line 13:15,16 17:7 34:20 37:14,15 40:6 67:1 109:17 112:9,13 117:25 120:7,25 125:25 128:19 135:19 148:16 156:4 161:18 167:4 169:19 170:12 174:25 175:2 177:13 204:18 216:10 228:1 234:18 250:10 271:15 lines 98:13 114:25 149:17,18,20,21 150:23 lion's 85:19 147:13 liquid 47:21,22 48:1,5 48:6 liquidation 67:15 list 7:8,9 21:2 83:25 Litchfield 9:11,19,24 11:12 12:7,14 13:1 20:8 21:7 33:22 55:7 62:14 92:15,19 96:19 97:13,14 102:25 103:3 108:12,13 109:9 111:13 144:21	154:21 155:23,24 156:1 162:19,24 165:19,23 166:2 169:24 170:17,24 178:1,14 200:8 204:20 260:25 262:12 literally 143:17 151:21 litigation 20:19 45:22 45:24 46:3,9 50:6 67:6 70:19,23,24 71:6 71:15,17 little 22:15 53:1 68:25 86:8 127:18 201:4 204:6 living 16:25 Livingston 4:14,16 LLC 32:9 33:4,5,6 47:10,11,13,15 68:9 load 159:7 loan 21:20 22:4 29:24 29:25 30:24 33:12 34:10,12,13 36:6,15 37:11 38:16 39:7,8 40:13 42:8 49:23 50:1,4 63:14 64:9 70:13 118:1 136:15 160:12,16,20 161:2 168:25 169:2 170:22 171:10,11,13,15 191:21,24 192:7 193:24 194:2 195:22 195:24 196:1,6,12 204:23,25 205:2,13 205:21 206:3,17 208:6,21,22 209:10 209:13 210:18 211:3 267:14 loaned 11:6 loans 29:23 34:19 43:20 local 79:25 96:10 localized 137:8 228:1 located 31:13 43:24 61:20 locations 62:21 139:2 lock 69:11 locks 69:9 long 13:11 14:4 46:12 61:18 74:24 80:14 84:5 87:14 88:5 93:2 93:8,10 105:16 108:6 159:10 190:17 207:4 233:20 268:24 longer 25:9 93:16 146:23 229:12 230:1 230:8 longest 13:10 long-standing 263:15 long-term 34:17 69:9 93:14 147:20 look 34:23 35:1 36:17 36:19 44:13 57:9	87:16 91:11 113:15 113:18,21 114:3,5,6 124:1 133:7,9 134:20 157:2,6 162:4,8,15 184:7,22 185:15 186:6 201:11 202:5 203:5 204:7 205:16 207:8,13 208:21 213:16 221:21,23 222:16 223:13 224:15 225:13 231:5 232:5 233:9 236:16 237:6,8 239:21 240:4 242:8 243:18 247:7 248:19 249:21,22 252:17,24 253:13 256:11 259:2 260:16 263:1 looked 5:1 98:19 157:23 160:5 164:9 172:6 195:25 200:21 210:16 235:7 258:20 268:22 269:2 looking 15:4 79:19 99:25 100:5 115:15 117:20 120:3,12 121:1,5 124:10,18 165:3 205:6 210:11 222:7 242:14 250:10 260:22 looks 121:6 156:8 223:22 loop 70:25 71:1,4,19,21 72:17 73:16,23 175:6 175:13,21,22,25 loosely 106:14 175:11 lose 167:1 lost 100:2 113:17 lot 10:17 17:3,24 78:6 93:16 96:11 123:21 168:3 207:2,23 223:3 266:21 273:11 low 23:16 95:22 lower 161:6 Lozier 82:22 91:15,21 91:22 92:11 128:12 128:12 262:22 LRF 108:19 lubricants 92:1 luck 12:13 LW 222:12 <hr/> M <hr/> mail 121:5,7 mailing 121:16 maintain 23:15 maintained 245:2 maintains 62:5 maintenance 79:10 80:4 81:15,15 88:19 127:18 128:10,19 129:21 133:19 138:24 159:20 191:15 266:25	major 46:24 105:21 200:2 making 39:15 81:25 88:21 95:8,11,12 111:7 132:2 267:17 man 51:24 161:7 manage 70:1 76:18 153:10 managed 78:2 management 22:20 76:8,9 77:7,16 144:10 manager 6:11 76:14,17 76:22 78:13,14,24 79:15 managing 16:8 manifolds 89:1 manner 136:4 manufacturing 95:13 96:11 March 53:1 127:11 148:19 margin 89:7 119:23 market 69:1 73:22 marketable 47:22 marketing 96:10 marshal 33:11 mass 149:7 master 84:10 Master's 75:18,21 123:22,22 matched 143:12 materials 274:1 matter 12:13 19:7 34:6 197:15 213:21 225:4 231:19,23 232:2 239:2 254:5 matters 3:18 4:6 72:6 123:17 225:20 241:6 MB 192:19 MBA 75:8 McCook 117:6 133:14 133:15 134:5 135:17 142:20 253:1 257:5 259:24 McDonald 228:20 272:13,20 McLean 156:16 mean 47:17 48:2 72:4 79:1 86:5 88:12 95:9 95:11,11 104:19 110:4 120:5 122:5 132:7 140:15 142:7 151:23 152:7 153:14 153:17,22 162:11 167:21 171:14 175:24 183:15,16,19 184:10 187:22,24 191:23 209:9 215:3 218:14 218:19 225:6,7,19 228:18 241:12 meaning 48:4 means 87:4 104:16,18
--	--	--	---	--

152:14 215:2 254:5 meant 228:23 measured 139:17 mechanical 75:6 228:6 mechanism 160:23 medium 13:14 96:10 medium-sized 15:24 meet 261:24 meeting 17:11 41:19 42:1 251:6 meetings 17:11 membership 33:3 47:6 memorialized 58:16 memory 52:25 249:23 Menomonee 76:19 mention 80:14 mentioned 28:8 32:6 34:16 80:23 83:1 147:5 194:23 262:5 267:5 mercantile 163:22,25 merely 69:20 184:18 met 41:16 methane 94:10 221:19 222:4,22 methodology 159:17,18 163:6,8 165:15,22 Michael 80:3 Michigan 75:6,7 76:2 mid 78:9 218:15 middle 221:10 223:21 midst 113:17 Mike 130:25 181:7 266:4,8 million 11:9 17:6 21:20 21:22 30:6,8,22 31:2 31:4,18,19,22 32:14 37:10,12 39:21 40:5 40:14,17,19 41:14,18 41:20 42:2 44:9,9,25 45:3 48:17 66:7,10,12 66:15 68:14,23 69:16 73:23 97:11 115:9,11 117:25 118:8 164:6 167:6,8,10 168:9,19 169:3 170:1,3,4,5,7 170:13,23 171:1,4,6 171:11,14 177:18 178:6,7,13 204:18 206:25 207:20 221:20 222:5 223:2 260:11 260:20 million-three-sevent... 115:14 million-two-fifty 11:11 38:6 168:15 mind 40:16,18 103:9 107:18 minimal 28:5 152:2 minor 20:5 105:21 minus 125:19,19,24 minute 118:15	missed 32:2 misspoke 20:7 mistaken 68:14 108:3 mistakes 153:20 MMBTU 164:4,5,8 Mobile 261:10,18 mod 215:16 models 143:12 modification 99:19 150:22 215:24 272:2 modifications 177:1 modified 126:5 monetary 17:3 21:14 23:9 260:2 money 10:9 12:4 17:19 38:2 55:20 63:14 68:18 69:17,19 132:13,16 133:1,5,20 133:22 135:7 136:14 138:8,9 140:3 141:14 141:19,22 142:12,14 142:17 144:3,13 148:3 154:3 168:3 170:20 177:14 192:13 193:20 196:6 208:6 monies 15:13,14 17:21 18:1 66:12,14 176:12 177:16 monitor 134:20 monitoring 80:13 85:6 85:14 87:4,5 128:22 128:24 191:15 220:24 221:4,7 month 32:15,17 49:19 128:3,5,16,23 161:8,9 161:15 182:8 227:20 267:17 269:4,7,22 273:3 monthly 17:11 87:9 88:18,22 128:24 months 10:15 32:11 49:20 106:10 109:5,5 125:2,3 126:21,22 127:13,15 131:22 158:19 222:21 223:8 268:5 271:19 morning 3:3,6,10,14 60:16 268:6 273:25 mortgage 160:14 161:5 192:2 mortgages 30:14 31:2 motion 3:20 4:13 5:17 5:18,19 6:14 8:6 20:10,12 53:25 274:2 motions 3:19 motivation 17:19 18:4 motor 129:8 Motors 75:12 76:1 212:17 mounting 120:9 move 14:14,14 15:15 15:19 17:8 116:20	119:10 136:4 185:4 226:10 246:13 271:19 moved 76:16 118:10 moves 131:24 moving 18:20 139:1 mowing 127:22,24 128:1 Muir 16:5,7 81:17,19 81:20,21 82:1 90:15 265:15 266:10,16 267:3 Muir's 129:13 multiple 112:19 134:12 156:8 158:22 multiply 158:21,23,24 158:24 municipal 94:9 <hr/> N <hr/> N 2:2 name 27:11,17 74:14 74:15 130:3 199:11 199:12 266:2,7 named 29:18 39:4 names 199:14 naming 61:15 natural 47:1 49:4,9,11 95:10 124:16 163:9 163:17 nature 22:3 29:19 38:14 226:14 247:15 near 24:9 209:6 nearby 15:11 necessary 19:18 20:23 21:13 203:22 204:11 261:24 need 3:18 9:24 10:9 11:2 12:22 13:8 14:18 15:17,17 16:16 35:1,21,23 36:20 38:6 50:8 65:9 66:1 68:7 91:10 92:1 147:15,18 174:21 177:16 194:9 196:13 211:20,23,23 212:1,3,6,7 215:25 226:7,20 233:22 244:25 264:20 266:21 273:25 needed 10:21,21 39:20 103:6 108:7 133:16 170:24 212:12 needs 16:18 37:25 114:12 149:5 negotiate 205:21 negotiating 45:2 68:21 negotiation 33:15 negotiations 31:3 Nelson 83:3 92:9 net 30:11,13 160:1 209:8 Nevada 116:1 never 9:25 19:8 20:22	21:1 71:4 72:18,21 138:9 152:21 188:16 189:2,11,12,21 190:8 190:9,13,25 213:17 228:12,15 229:9 230:12 new 14:19 18:3 34:25 35:17 56:8 60:2 79:19 81:23 86:1,2 89:25 91:24 103:1 104:2,4 108:25 117:17 145:8 146:15 163:22 170:3 188:24 190:7,15,18,20 206:15 243:2 269:15 271:11,13 newbies 93:2 Newbold 172:25 newer 110:23 nice 48:11 Nickels 38:22 52:22 54:14 56:20 Nicor 13:16,18 156:20 Nineteen 95:18 Ninety 105:25,25 Ninety-six 270:6,7 nitrogen 242:15 nominal 164:12 nominally 164:21 nominee 4:24 5:2 nonappealable 115:8 noncompliance 3:25 20:1 22:12 nondebtor 179:19,23 180:1,5,16,22,25 181:24 182:5,11 194:16,18 195:3,4,6 195:11 196:16,19 nonexpert 157:13 nonIIT 8:10 nonmonetary 21:14 23:9,12 nonpeak 125:4 nonsummer 125:2 normal 129:10 131:2 266:25 normally 150:7 217:3 Northern 1:1 75:9,19 123:24 note 4:12 7:2 36:6,20 36:25 37:2,7,9,13,18 37:22 39:7 40:12 63:11 118:1 126:4 160:17 196:1 210:16 210:17,21,22,24 211:1 225:7 248:1,17 257:1 notes 43:20 notice 97:15 99:20 109:3 114:14 117:22 145:17 160:4 166:9 174:2 190:24 196:11	202:19 225:5 226:3 231:22 234:18,18 241:5,7,8,16 248:5 250:8,20,21,25 251:7 252:19,21 253:9,24 254:3 notices 16:20 142:23 173:9 241:15 247:16 notification 137:23 notwithstanding 20:21 NOV 137:24 224:21 226:23 231:1 232:10 232:15 233:5,7 234:17,20 235:5 236:12,23,25 238:4 239:5,12 240:6 242:5 242:9,23 248:22 249:10,17 November 47:18 81:22 NOVs 142:23 188:16 189:22 224:10 231:3 235:23 241:3,20 247:2 248:12 nozzle 137:12 NSPS 109:1 134:10,21 134:24,25 135:3 number 53:4 72:7 96:5 107:2 116:18 125:15 129:20 131:19 158:17 158:20 159:20 160:10 160:17 161:24 162:12 164:3 172:22,24 201:18,21 221:9 223:15,22 234:20 237:8 256:16 258:8 270:17 numbers 39:17 40:1,2 40:3 49:14 90:8,19 125:11 127:22 131:14 131:17,21 159:17 164:17,18 174:24 176:1 178:17 201:17 numeral 221:9 NYMEX 163:9,16,20 163:21 165:20 NYNEX 124:16 <hr/> O <hr/> object 100:12 157:12 185:25 225:18 231:14 236:17 238:17 240:7 243:20 244:18 258:13 objected 11:22 35:9 244:16 253:21 objection 59:3 71:20 72:5 100:17 196:25 224:24 231:24 238:21 243:23,25 244:21,22 244:23 245:5 247:14 258:12 objections 239:8 247:9 247:17
--	--	---	--	--

obligate 262:23 obligated 96:25 97:6 195:18 262:11,16,17 obligation 37:10,12 96:18 97:5 210:22 211:1 obligations 34:21 37:5 96:24 122:22 205:13 256:8 obtain 18:7 23:20 62:19 99:17 203:22 obtained 18:9 75:5,11 118:21 204:11 obtaining 113:2,3 184:12 obvious 22:15 obviously 13:3 114:23 129:16 132:22 137:17 169:11 178:5 occur 81:19 occurred 137:9 occurs 148:10 October 47:18 120:22 121:6,9,23 122:2,3 offensively 258:16 offer 4:9,10 7:10 67:23 67:25 offered 11:5 45:9 67:21 offering 231:18 office 61:25 62:5 officer 51:19,20 157:16 offices 22:18 Oh 32:2 83:23 103:2 107:13 117:23,25 125:17 126:19 130:9 136:19 151:20 164:18 165:12 168:13 171:23 175:2 186:14,16 197:16 198:21 218:24 244:6 246:20 Ohio 146:15 264:7,9 oil 29:22 32:5,8,9 33:6 33:9 34:20 43:19 47:1,6,8 48:6 49:4,9 49:11,16,19 68:25 69:4,7 82:17,19,19,22 82:23 83:3,4,22 84:3 84:6 88:19 91:15,21 91:23,24,25 92:2,9,11 92:12,18 262:22 okay 3:17 5:19 8:2,11 18:15 24:16 27:3 28:8,13,18,21,24 29:1 29:13,19 30:1,11,15 31:7,20,24 32:24 33:14,21,25 34:14,23 35:3,25 36:8,13,22,24 37:5 38:2,9,14,18 39:6,23 40:5,15,20 41:3,14 42:5,16 43:12 43:22 47:4 48:21 50:17 51:16,23 55:14	56:1,16 57:21 60:8 61:6,7 63:12 66:16 67:4,19,21 68:2,24 69:15,22 70:3,11 71:7 73:5,24 74:21,24 75:2 75:14,22 78:1,5 79:8 79:12 80:2,14,21,24 81:24 82:11 83:7,13 83:14 84:5,9,23 85:20 86:3,12,15,19 87:1,13 87:16,22,25 88:2,5,16 89:2,8,14 90:4,7,12 90:20 91:3,10 92:13 92:22 93:4,11,21 94:4 95:2,19,25 96:17 97:4 97:19,25 99:4,11,15 99:22,25 100:25 101:1,8,10,16,20,25 102:8,10,14,21 103:2 103:17 104:24 105:7 105:14,16 106:1,12 106:18,23 107:1,5,8 108:2,10 109:16,19 110:1,3 111:4,5,10,15 111:21 112:12,15 113:1,6,10,13 114:17 114:23 115:2 116:3 116:10,18 117:14,20 118:3,5,13 119:4 120:14,17 121:1,4,23 122:19,25 123:5,8,14 123:16 124:1,12 125:25 127:17 129:3 129:22 130:7,10,21 131:4,9,13,17,25 132:19 133:4,10,13 133:22 134:4 135:2,8 135:21 136:11 138:10 140:9,12,14 142:22 144:16,23 145:1,8,11 145:22 146:6,22 147:11 149:1,17 150:6,17 151:10 152:3,23 155:14,19 155:22 156:10 157:2 157:6 158:5,14 159:10,13,24 160:1 160:23 161:5,12,15 161:20,23 163:2,11 163:24 164:3,7,12 166:12,24 167:3,12 168:4,8,14 169:23 170:14 171:18,23 172:2,5,13 173:6,15 173:20,23,25 174:9 174:12 175:9,20 176:2,9,19 177:7,19 178:1 179:13,18,21 179:25 180:7,11 181:9,23 182:5,10,22 183:12 184:3,16,22 185:17 186:16,18	187:11 188:2,8,16 189:2,13,19,21,25 190:17,22 191:4,18 191:21 193:23 196:10 196:22 199:1,7 200:10,13,20,24 201:12,20,24 202:1,8 204:9 206:6,23 209:4 209:18 210:5,21 211:13,14 212:8 214:6,12 215:6 216:2 217:22 218:7 219:8 219:18,23 220:12 222:1,25 223:20 224:8,13 226:18 227:6,15,17,22 228:12 229:11 231:13 231:17 232:6,14,19 233:24 234:12 235:5 235:19 236:11,21 239:7,10,16 240:2,25 241:11,23 242:8,20 242:25 243:9 244:10 245:12 246:24 247:2 248:4,5,10 249:9 250:18,23 251:14 252:9,21 253:6,9,19 254:2 256:7,17 258:25 259:7 261:3,6 261:11,14 262:2 265:25 266:13 267:16 272:5 273:11,21 old 4:8 30:3,22 248:1 once 10:14 14:20 16:14 25:8 89:19 103:10 106:1,6 107:14 110:25 151:2 152:23 202:7 231:21 252:5 ones 47:25 68:6 78:7 114:23 138:6 195:25 ongoing 19:8 45:21 84:8 153:11 154:9 online 10:16 11:3 39:17 41:22,24 88:24 89:4,7 89:11,16 90:3,25 98:16 99:3 108:11 119:20,25 122:20 127:12 133:16 147:15 148:4,7 174:16,19 265:8,14 266:22 267:3 268:24 269:2,6 271:16 273:2 on-site 81:24 82:3 90:16 97:21 98:10,24 open 139:1 140:16 192:21 227:1 240:6 opened 192:19 opening 8:17,20 operate 10:25 14:22 18:4 20:3 21:25 23:21 41:5,9 62:20 99:5 101:21 106:9,16	107:15,21,24 108:3,6 117:15 122:22 133:6 137:13 145:9,23 146:18,19 187:1 188:19 189:5,8,16,25 201:1 204:4 211:20 212:2,16 213:4,13 221:18 222:3 242:1 246:16,19,24 252:25 253:6 254:11 257:21 operated 132:24 145:2 145:3,23 146:7,18 147:6 187:7 190:13 190:17 217:16 219:14 219:16,17,20 241:23 246:18,20 261:6,11 261:14 operates 5:11 32:8 47:1 145:11,13 188:4,14 188:25 189:14 operating 11:19 13:20 16:5 17:4 22:7,9 42:24 69:23,24 107:12,17 120:22 131:11,21 132:20 135:10 152:2,22 157:15 158:12,13 159:6 168:19 169:7,9 169:9,15 170:8 177:22,24 181:25 187:19 191:8,9,13 193:5,9,13,19,25 194:20 195:18 196:4 204:3 209:8 212:20 213:2,3,20 214:1 218:20 221:9 227:10 229:25 237:16,21 242:17 operation 12:24 42:7 48:6 64:5 79:10 90:19 126:22 154:13 158:19 194:5 226:4 240:15 242:5,11 247:3 249:11 253:10 259:23 264:3 267:1 operational 18:22 90:17 154:7 228:9 operations 9:25 10:1 12:23 16:3 19:4,5,9 22:10,17 29:10,23 32:10 34:21 40:21,25 42:12 55:17 77:21,22 78:13,24 79:5 90:16 182:5 194:3,4 198:4 204:19 224:22 operator 151:9 opine 255:3 opinion 72:24 92:23 140:1 157:13 opportunity 67:21 opposed 130:4 144:2 147:23 163:13 175:6	175:13 option 156:15 208:11 options 69:6 251:20,21 oral 195:8 order 9:22 11:25 12:11 33:12 38:7 41:25 50:3 69:7,15 115:8 139:22,25 141:8 150:8 155:16,17,17 168:6 190:21 195:1 198:24 217:3 237:19 238:10,12 256:13,15 256:16 268:7 269:15 272:24 ordinary 33:3 43:8 47:7 245:3 original 28:2 121:6,20 originally 28:3 Orleans 145:8 188:24 Ottawa 102:4 216:17 ought 201:18 outcome 69:20 outline 220:17 252:3 Output 90:19 outside 22:19 80:24 104:18 140:15 144:18 217:13 outstanding 30:24 168:25 169:12 232:22 234:24 235:5 240:15 240:17 253:25 254:5 outweigh 23:13 out-of-pocket 176:12 overall 77:23 79:9 167:3 269:4 overcome 19:10,14 overgirth 104:10,18 152:25 overhead 272:25 overheight 14:13,15 15:2,7 104:10,11,12 104:16 140:23,24 141:3,5,9 151:16,18 151:21 152:24 237:25 249:14,16 override 247:16 overruled 59:7 100:18 157:14 186:5 197:3 238:23,25 243:25 oversaw 77:13,21 oversee 29:10 77:22 238:12 oversees 79:4 oversized 143:11 owned 29:6 30:4,17 31:14 39:2 43:17,18 43:19 47:23 52:13 253:4 owner 38:25 43:23 44:1 44:21 46:8,21 50:25 51:20,21 52:10 134:12 139:5 140:25
--	--	--	---	--

151:9 222:9 owners 254:17 ownership 31:25 46:25 48:5 52:4 82:8 101:22 102:14 owns 30:3 31:15 33:3,4 34:12 46:8 47:1,5,7 51:3 52:20 oxidation 137:8 152:13 oxygen 137:16 152:11 152:12,17 153:7 O&M 128:16 129:10 154:9 o'clock 60:3 O'Meara 1:16 3:12,12 5:24 6:17 8:15 100:12 157:11 171:21 179:2,6 183:16 185:4 185:6,18,19,23 186:7 186:10,13,19 197:10 198:2 201:13,16,20 202:4 203:19 209:15 209:18,21 210:2,5,7 211:13,16 220:8,12 220:16,19 223:13,16 224:15,17 225:9,15 225:23 226:10,18,22 231:5,8,12 232:9 233:12,24 234:13 236:16,22 239:3,11 240:25 241:1 243:18 244:1,10,11 245:4,9 245:12,16 246:3,12 246:15 247:7,23 248:19,21 250:23,24 253:13,19 254:2,6,8 255:23 256:1 258:17 258:25 259:7,8 263:21 271:25	221:25 222:17 parallel 154:13 parameters 12:10 221:7 parasitic 158:24 159:2 159:6 part 9:6 28:6 39:6 49:4 49:8 54:5 102:5 114:2 146:25 153:19 173:15 184:14 200:16 200:24 201:6 234:9 237:4 241:18 particular 5:16 84:14 107:20 114:2 157:18 165:19 233:6,8 parties 8:10 9:14 18:3 23:8,10 102:13 149:10 199:14 258:14 Partners 31:15 partnership 30:3 31:3 31:15,16 34:18 43:17 46:2 47:10 parts 89:24,25 221:20 222:4 223:1 266:21 party 8:19 16:7 18:20 24:22 34:5 46:9 53:15 59:16 63:21 65:10,11,13,15 70:9 71:1 84:24 88:15 91:16,18,19 92:8 102:14 197:14 233:17 233:19 238:7,8,11 pass 42:14 135:10 178:21 263:22 passage 185:2 passed 135:6,12 pay 10:10 13:2 15:13 15:14 18:1 37:10 67:2 97:5 98:7 118:5 119:16 127:25 154:4 154:6,9 160:21 161:8 161:9,16 169:11,18 169:25 170:18,21 171:5,13 172:20 173:2,16 174:6,7 paying 156:12 160:12 160:16,24 169:1 193:5 194:12,18,22 194:25 195:3,16 203:20 268:2 payment 66:23 67:2 115:12 118:8 125:13 142:2 160:6,9 170:25 211:2 268:4 payments 37:17,25 38:3,11,13 210:23 payor 211:1 payroll 129:14 173:4 194:24 PCB 77:4 PDF 124:23 peak 125:3	pending 14:23 31:5 70:18 106:17 107:22 107:23,25 226:2 245:20 259:13,15,19 260:9 Pennsylvania 146:15 people 4:5 5:7 17:4 18:5 22:3,6,25 78:2,5 80:25 81:1 153:19 194:8 263:16 267:5 Peoria 1:18 3:16 4:10 6:1,2 9:8 11:18,22,24 15:21,23 16:12 17:10 17:16 21:12,17 22:13 23:3,17 24:11,15 25:15,18,20,21 26:2 26:14,18,21 27:1 33:23 38:1 66:22 81:15,24 82:23 87:24 88:1 89:12,13 91:24 92:16 102:25 103:18 118:12,13 119:12 120:1,19 121:8 122:2 122:20 123:1 126:3 127:3,25 129:25 131:5,15 136:18 142:24 147:11 149:2 150:21,25 154:18,23 154:25 155:2 157:24 159:15 162:1 167:11 168:1 169:9,16 170:9 170:17 174:14 175:16 176:9,17 177:9,22 182:1,6 200:10 204:20 264:21 266:11 266:17 267:16 268:15 268:18 269:21,25 Peoria's 23:11 149:9 perceive 231:20 percent 30:4,8 31:16 33:19 44:21 49:10 52:13 112:21,24 125:19,20,24 128:8 131:24 140:23 160:6 160:9,10 165:12 269:3,5,6 270:6,7,10 270:11,15,16,18 percentage 31:24 149:7 160:17 209:7 270:4 percentages 191:25 perfect 153:20 perforations 144:1 perform 12:2 18:23 19:24 39:14 55:20 64:8,10 68:16 86:10 99:18 performance 4:2 6:6 18:7,9 21:17 24:7,10 24:15 97:9,23 111:8 112:16,17,21 113:3,6 115:13 120:14 134:25 200:25 201:5,8	202:13,16,22 203:2 203:21 performed 15:4 performing 62:10,13 66:13 period 63:7 108:5 141:24 168:20 192:12 217:13 219:2,3 221:5 268:23 270:24 periodic 80:12 periodically 46:19 periods 219:24 permanently 230:19 permit 6:4 9:24 10:5,13 10:20,21,24,25 12:22 14:9,19,20,21,22,23 15:16,17 16:2,2 23:19 23:21,22 24:3,4,8 62:19,19 87:6,8,8 99:4,6,9,10,12,13,15 99:17,19,20,21,23 101:14,15,17,23 102:4 103:9,12,15,21 103:23 105:4,9,17,24 106:2,5,13,15,16,16 106:17,20,21 107:10 107:13,14,17,18,19 107:21,25 108:24 109:24 110:4 120:18 120:18,20,23 121:7 121:25 122:13 131:3 150:22 174:4 176:10 204:1,2,3 211:17,20 211:22,24 212:2,8,14 212:15,20,21,21,22 213:1,2,3,5,10,14,19 213:20,22,25 214:1,3 214:8 215:3,10,16,17 215:23 216:25 218:13 218:17,20,21,25 221:6 229:25 230:3,6 230:7,13 232:17 242:1 246:24 253:6 271:8,11,13,20,21 272:1,1 permits 5:21 6:11,20 7:22 16:17 100:17 103:1,4,10 105:3 106:23 107:23 108:18 117:17 118:22 119:1 130:22 131:2 151:8 203:23 204:11,14 213:22 216:16 238:13 permitted 104:13 218:10,15 permitting 6:2,13 10:18 77:10,24 85:5,8 108:15 109:20 112:4 129:1 169:8 235:21 person 80:11 175:15 251:1,4,4 personally 216:5 236:2	259:11 personnel 18:2 41:11 56:1 persons 19:15 22:9,11 perspective 151:7 216:19 Peter 1:12 3:4 phase 193:15 194:7 Phil 80:7 181:7 Philipini 130:15 Philman 130:15 phone 249:4 photo 58:3 pick 126:7 159:3 picked 76:18,19,24 77:11 picture 143:5 piece 44:2 115:15 185:16 pieces 43:18 pierce 70:25 piercing 70:19 pipe 148:24 149:24 150:7,8 228:23 pipeline 12:9 15:11 95:9,10 154:17,21 156:2,22 200:6 261:1 261:7,19,25 pipelines 15:10 pipes 141:10,12 piping 218:3 place 4:7 8:10 40:10 46:15 60:2 71:5 72:18 100:2 110:7 113:18 116:13,15 138:7 153:6 154:1 155:7 206:14 209:10 places 5:3 placing 139:2 Plaines 146:16 plaintiff 73:1 plan 12:8 13:13 15:8,10 42:10 64:10,10 69:18 84:5 85:1,12,13,15 93:8 110:17 112:4 117:3,4 119:22 120:11 135:21 138:7 167:7,14 195:1,14 199:18 206:14 planning 114:20 115:19 209:5 259:17 plans 22:19 28:4 69:16 70:4 91:20 96:1 111:16 112:16 119:13 132:8 183:17,19 188:23 199:15 206:6 206:9,11 210:9 plant 64:5 76:4,4 81:15 97:22,23 110:10 111:9 117:15 129:5 134:8 138:13,15 143:7 156:17 167:18
--	---	--	--	--

<p>167:21,23,24 170:2 171:4,5 178:5,6,13 189:9 199:23 200:3 212:18 227:23 270:14 plants 34:7 41:5 62:20 77:13,23 79:5,11 96:8 96:8 116:2,4,5,9 270:12 please 8:21,22 27:11 57:18 74:14 75:22 162:16,16,22 232:5 233:11 234:11 248:3 plus 98:8,9 115:5 125:18,19,24 128:12 191:25 point 6:9,15 25:4 64:19 69:14 89:4 96:25 97:15 103:8 104:24 106:19 107:10 122:16 150:1,2 184:20 197:4 204:7 221:10 228:18 235:17 245:19 253:15 267:11,12,23 pointing 5:15 points 20:6 149:22 255:5,5,7 policy 130:3 Pollution 217:12 Pontiac 4:14,16 137:4,6 138:13 257:22 pop 121:18 portion 40:7,8 49:22 50:1 position 3:23 25:9 50:1 50:3 66:25 76:6,13 77:8 135:19 136:1 137:10,17 179:13 222:10 266:16 267:6 267:9 271:6 positive 136:4,17,22 147:21 152:16,19 153:8 160:2 161:13 162:2 164:24 166:7 178:19 223:6 224:3 230:22 possess 198:4 possibilities 50:9 possible 8:25 9:3 35:13 148:22,23 213:24 214:2 Possibly 9:5 post 97:9 111:8 112:20 115:13,20 202:16,21 203:10 posting 203:9 postmark 122:17 post-petition 41:1 potential 152:13 222:15 260:2,9,19 potentially 72:12 power 60:17 87:18 154:11 198:10</p>	<p>powers 185:8 practice 239:25 practices 22:25 precisely 253:15 263:9 preclude 213:1 precludes 202:14 predated 80:8 preference 175:14 preferred 33:5 47:5,9 47:12 73:21 prejudicial 72:9 preliminary 3:18 prepare 42:22,25 123:18 150:22 242:23 prepared 39:11 40:13 157:9 251:24 preparing 123:9 125:7 prepay 161:4 present 33:2 70:6 229:12 presented 68:18 presenting 65:17 presently 194:25 presidency 78:2 president 11:8 28:11 50:17 51:6 54:4 58:23 74:18 77:16,18 132:5 133:5 179:10 179:15,18 182:11 195:11 196:19 press 35:21 pressure 152:19 153:8 pressures 147:21 223:6 224:4 230:23 presumably 21:19 108:2 presume 51:9 188:6 presuming 41:16 221:2 pretty 57:25 120:5 127:20 128:22 132:8 156:9 168:1 196:12 267:15 prevent 58:24 59:24 141:9 prevented 264:25 265:10 preventive 88:18 previous 4:8 22:16 previously 13:22 29:6 39:1 88:3 125:8 133:2 136:9 196:5,22 217:15 254:19 256:2 257:3,20 pre-existing 52:24 pre-paid 257:11 pre-petition 40:22 62:10 173:21 price 45:1 49:4,9,16,18 68:11,21 69:8 116:23 163:10 164:7 165:20 269:17 pricing 164:1,9</p>	<p>primarily 11:6 77:11 87:24 88:1 92:2,10 principal 43:9,13,14 161:3 168:16,18 170:25 principals 68:5 207:23 prior 55:1,23 63:17 66:2 150:1 186:25 187:9,12 197:18,25 202:19 233:22 240:19 244:9 pro 39:11,24 41:17,19 42:2 62:24 63:8 123:5,9,10,21 125:8 125:15 126:7 131:11 131:16 136:21,25 151:11 157:9 158:8 158:12,13 159:18 162:18,24 165:19,23 168:15 177:25 192:1 269:25 probably 11:9 95:24 108:17 138:24 161:6 166:13 167:19 200:7 263:20 266:23,23 probative 4:6 5:17 6:15 problem 4:18 14:11 35:14 104:22 113:10 139:13,19 140:18 141:2,5,7 143:23 148:11 152:5 174:3 193:14 240:13 245:6 272:25 problems 12:6 16:20 17:13,24 22:2 23:5,6 137:3,6 138:21 140:20 189:22 190:10 230:18 proceeding 25:3 proceedings 1:8 8:19 60:5 274:4,8 proceeds 33:19 process 7:24,24 9:6 10:13,14,23 11:1 14:22 94:2 95:1 106:19 108:25 109:21 111:12 118:24 176:21 203:8 204:6 218:19 230:17 272:3 procured 194:2 procuring 130:13 produce 5:9 20:23 69:12 212:19 produced 126:13 246:4 produces 94:10 269:22 producing 163:14,15 product 95:12 production 69:14 143:21 154:15 164:13 268:15 professional 75:23 profit 48:11</p>	<p>profitability 48:13 49:3 49:7 program 19:3 23:19 99:9 project 98:11 105:20 106:6 182:1 200:11 209:8 261:7 264:7 projected 23:6 63:6 69:14 projection 166:16 projections 39:12 41:20 157:15 159:15 192:3 projects 41:21,22 42:1 78:16 79:16 92:20 93:15 96:9 112:19 123:11 200:14 202:16 promissory 37:7 39:7 118:1 196:1 210:16 210:17 proof 18:24 19:19 20:4 21:18 proper 82:21 238:11 properly 255:14,18,19 properties 41:16 46:16 47:2 property 30:14 31:2,4 31:11 33:14 44:6,22 44:24 45:6,12 50:5 67:5,8 184:14,18,19 185:12 205:15 proportionately 127:19 proposal 157:18 proposed 18:20 58:14 61:13 62:7 proposes 22:24 proposition 5:14 prorated 129:23 prospective 45:25 proud 161:6 prove 130:20 proved 41:15 provide 4:25 6:2,5,9 9:16 21:16,23 23:3 24:4,6,10,14 82:23 87:23 91:24 92:3,11 92:12 97:15,23 98:10 98:11 114:14 115:3 115:12 118:17,20 208:7 263:4,10 provided 18:12 24:12 providers 262:5 providing 81:1 91:23 93:2 provision 58:8 60:14 provisions 184:4 PSI 137:14 public 109:3 published 124:20,21 157:22 publishes 164:1 pull 100:1 143:15 152:8</p>	<p>152:10 231:11 264:8 pulled 35:2 124:22 pulling 152:10 pump 137:13 pumping 82:21 purchase 20:21,23 45:13,18 46:10 68:11 154:11 198:10 purchased 29:23 purchaser 45:25 Purdue 75:12 purport 253:23 purpose 63:8 221:3 purposes 19:2 65:17 141:21 204:24 pursuant 89:10 99:19 195:5,21 198:6,19 204:16 218:12 221:5 pursue 241:8,16 250:9 250:22 252:19,22 254:4 pursuing 42:8 pushed 36:1 put 10:10 12:9 13:25 63:5 83:24 99:2 104:17 110:8 116:25 128:25 136:7,9 140:2 140:21 143:25,25 151:14 152:8 155:7 175:16,21,25 200:25 201:5,9 245:14 260:15 261:19 puts 69:7 152:24 153:2 153:2 putting 104:2,4 109:8 110:22 200:4 p.m 1:7</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualified 29:9 62:19 199:12 quality 95:10 261:4,24 quantity 46:18 quarry 139:15 question 4:19,24 5:1,4 21:15 23:14 24:6 37:9,16 40:15,18 47:19 57:7,15 58:5 59:10 62:6 71:8,11 134:14 181:18 190:5 197:2,22,23,25 203:17 212:14 222:23 226:2,8,9 229:8 231:21,25 232:7 240:8,10,19,20 241:13 242:22 244:24 246:10,11 250:15 255:11 260:14 262:10 262:11 263:24 266:6 questionable 22:21 24:5 questions 64:16,20</p>
---	--	--	---	--

65:3 66:19 67:7 246:6 264:15 273:20 quick 38:12 167:18 168:1 quicker 110:5 quickly 41:23 48:10 159:3 quite 7:4 45:7 quotes 124:16 163:17	69:1 97:10 144:17 156:23 175:7 186:20 187:5,5 192:23,25 205:5 220:2 222:7 225:7 232:10,12,13 233:4,7 234:14 236:23 239:6 247:5 248:14 249:4 255:4,9 255:14,17,22 257:11 258:5,7,9 269:18 recalling 144:19 receive 29:5 33:18 46:19 162:3 236:2,4 236:12 241:5 245:17 247:2 253:9 received 7:20 46:23 189:3,22 190:8,25 197:11 198:6 214:18 224:10 225:5 231:3 231:22 235:23 236:3 236:9 239:12 241:14 241:20 242:4 245:2 248:12,14 249:5 250:13 268:4 receiver 23:24 206:11 206:14 214:14 237:18 238:10 268:8 receiver's 238:9 receives 252:5 receiving 191:18 232:10 recess 60:5 178:24,25 reciprocating 96:8 218:1 recirculation 120:10 recognize 220:20 223:17 224:18 recollection 57:2 60:17 61:5,8 186:21,23 221:11,24 224:1,3 235:4 256:12,23 260:21 recommendation 234:10 record 7:3 19:25 27:12 74:15 233:20 245:2 247:10 records 83:12 recover 71:19 72:15,23 recovered 73:10 recovery 149:7 254:22 RECX 2:5 Redirect 66:17,20 271:1,3 reduce 149:7 269:21 reduces 152:24,24 reductions 269:24 REDX 2:5 Reed 7:3,5,15 8:3 183:16 Reed's 6:22 7:18 refer 8:24 33:15 81:18	106:12 118:25 179:19 181:19 241:7 252:12 reference 4:14 referenced 88:3 232:18 references 220:9 referred 49:14 217:19 251:18 referring 60:14 70:23 124:20 182:3 241:6 241:10 248:22 refresh 57:1 61:7 186:21,23 221:11 224:1,3 249:23 256:23 refreshed 171:9 refreshes 61:4 221:24 235:4 256:12 refused 17:25 regard 7:5 12:7,15 13:18,19 15:21 63:12 77:20 85:2 106:1 108:10 114:5,17 119:12 122:19,25 123:25 130:21 147:11 153:4 158:12 regarding 4:10 5:20 6:11 7:10,11 17:16 23:20,22 27:2 39:10 41:11 42:11 52:23 60:17 91:21 135:21 190:24 198:3 214:19 225:19 234:17 235:20 240:8 regards 85:4 190:6 regimes 11:23 regs 99:19 252:24 regular 17:12 42:23 46:17 47:15 265:18 regularly 43:2 245:17 regulation 101:12 102:19 122:15 147:24 regulations 5:8,11 62:16 87:10 135:20 150:13,15 204:16 213:17 252:17 regulators 5:13 regulatory 94:2 105:18 118:21 151:7 204:14 reimbursements 130:22 reinstalled 269:16 reinvestment 19:3 28:4 187:4,17 reissue 238:15 reject 252:7 rejected 108:5 240:3 244:13 250:16,17 252:16 rejection 252:9 related 21:21 81:1 85:7 144:24 145:17,19,20 216:11,12,13,13,14	236:25 237:3 242:5 242:11 247:3 249:10 249:11 253:10 256:4 259:23 262:3 265:12 relating 9:11 73:4 101:4 144:21 225:11 239:12 relation 156:22 relationship 17:9 25:23 28:9 38:15 50:14,15 52:2,3,24 82:7,16,24 85:25 86:1 88:8 155:6,8 250:20 263:15 264:10 relatively 12:17 14:5 relevance 100:13 185:25 236:18 238:18 238:21,22 243:21,24 244:23 relevant 5:17 6:9 17:17 72:11 211:8 relied 63:25 relying 64:13,15 69:24 69:25 70:2 remain 24:23 27:4 183:6 227:1 232:22 remained 62:15 remaining 21:15 remains 71:14 234:24 235:5 240:6 253:25 remediation 77:2 remedied 174:4 remedy 174:6 remember 68:8 73:20 162:12 193:2 197:7,8 197:9 220:7 221:22 223:9 224:14 225:13 226:25 231:4 233:1 236:13 240:4 249:21 256:10 260:6 262:6 268:12 272:7 remembers 171:21 258:24 remonitoring 222:16 removal 15:6 60:23 186:10 237:25 remove 60:18 61:9 104:10 141:9 229:20 removed 15:1 104:25 renewal 23:23 24:3 106:17 120:21 121:8 204:1 214:8,10,19,22 214:24,24 215:11 216:25 renewals 87:8 renewed 6:20 120:20 212:12 214:4 215:3 rental 128:5 reorganization 67:16 repaid 63:11 repair 174:13 227:7 repaired 149:5 228:12	228:15 229:9 230:13 repairing 120:5 repairs 148:15 174:22 177:1 repayment 211:2 repeat 232:7 repeated 20:1 repeating 119:7 replace 89:24 183:13 183:17,19,22 replaced 89:24,25 replacement 129:7,8 replacing 70:9 report 90:17 117:7 220:24 221:3,6,21 reporting 80:13 85:5 87:9,9,10 221:4 reports 80:5 221:6 represent 8:23 26:20 26:24 representation 27:4 representative 24:23 25:17,21 26:5,21 62:12 65:10,12,15,19 65:21 197:14 233:17 representatives 120:2 represented 38:24 273:6 reputable 93:1 request 17:25 101:4,22 102:17 150:21,23 251:5 requested 12:19 14:7 15:25 requesting 9:22 requests 134:13 require 262:8 required 4:25 18:6 25:3 39:18 88:22 104:9 113:7 118:22 120:15 129:25 137:23 161:9 201:4 204:14 212:15,16 217:5 229:25 requirement 203:2 252:18 requirements 114:12 202:13 221:6 requires 66:22 173:15 200:25 204:10 230:7 245:21 reserves 20:25 142:14 resident 79:6 resign 29:11 resigned 56:6 resolve 251:24 252:3 resolved 9:13 232:18 232:19,25 248:18 Resource 1:5 3:2,25 40:21 74:19 77:8,9 198:15 254:21 resources 86:9
---	---	---	---	--

respect 17:15 19:5,13 20:15 44:4,15 56:4 153:14 207:3,4 respecting 3:20 respond 217:8 239:16 251:2,9,17 responded 239:23 241:20 249:17 responding 236:7 243:4 249:7 251:20 responds 6:23 251:23 response 74:2 238:6,9 239:20 242:23,25 243:1,4 responses 7:17 responsibilities 241:19 responsibility 76:24 79:9 82:2 222:8 235:10 responsible 41:8 76:23 77:10,23 rest 95:19 restriction 59:22 result 16:25 20:3 63:20 137:20 139:6,20 170:17 223:7,10 224:4,11 226:23 232:15 243:14 255:19 resulted 137:24 results 147:20,20 resume 60:3,8 78:14 273:24 Resumed 60:11 retain 20:17 258:14 retaining 41:11 retains 41:9 return 69:9 revealed 22:10 revenue 40:1 63:6 126:1,2 128:8 131:19 182:6 191:18 209:8 269:21 revenues 49:10 63:23 64:4 127:2 158:15 reverse 72:16 review 39:10 63:8 79:7 101:13 102:20 104:9 108:7 121:20 205:23 215:1 216:9 reviewed 39:15 63:3 revoked 174:3 revolved 140:22 revolving 37:15 RE-CROSS 71:12 Richard 78:12 131:1 181:6 266:5 Ridge 101:4 140:19,20 216:14,16 246:17,21 247:4 248:13 249:12 264:12 right 7:5,9 20:17,20,25 27:24 28:25 30:8,9	35:12 36:3 38:3,4 40:10 43:3 45:5,11,15 46:6,12 47:4 48:7,9 49:7,9,17,23,25 50:1 50:7,11,15 51:19,21 51:24 52:5,15 53:11 53:15,18 54:4,5,7,12 54:22 55:18,24 56:3,9 56:14,23,24 57:9,11 57:16 58:6,11,13 59:18 60:1 61:3,12,21 63:2,18,25 64:10 65:5 65:24,24 67:9,10 73:8 73:11 74:19,22 78:8 78:11 84:1 85:15 86:21,24 88:16,17 89:15,21 90:22,24 91:9,16,18 93:24 94:17 95:4 96:15 102:9 103:2,19 110:11,15,21,24 111:12 113:9 114:8 114:19 115:1,22 116:24 117:13 118:14 118:19,23 119:2,12 121:4,16 124:18,22 126:4,24 127:1 129:19,19 131:12 135:15 139:9 141:3 142:19,19,21 143:2 144:15,20 145:3,10 145:12,14,15,25 146:1,9,23 147:4,7 153:1 154:14,20 155:5,21 156:14 158:7,11 160:2,25,25 161:14 163:18 164:23 165:6,14,17,24 166:1 166:4,5,9,14,15 167:2 169:5,21 170:10 173:1,1,1 174:13,17 175:3 177:5,6,15,23 177:25 178:4,15,21 179:2,15,23,24 180:3 180:6,17 182:13 183:2,10,23 184:10 184:14 185:4,9 188:5 188:15,17 189:1,10 189:15,20,24 190:11 190:12 191:11,22,23 192:4,20 193:7,22 194:7,12,21,21 195:13,19 196:4,9,17 199:4,8 200:9 201:2 201:25 202:1,25 203:18,23 204:4,12 205:4,19 206:4,18 207:20 208:2 211:10 212:12 213:11 214:17 216:18 219:13,25 220:16 221:20 226:18 227:18,20,24 228:7,8	229:9,10 230:9 231:3 231:11 234:25 235:1 235:12,18,21 236:6,9 236:10 237:22 239:5 241:21 245:9 246:14 246:22,23 247:18 250:9,10 251:7,25 252:7,11,13,14 254:12,23,24 256:5,6 257:5,6,9,16,23,24 258:8 259:25 260:1 260:15,16,17 261:2 262:16,24 263:22 265:2,22 266:12 267:7,18 271:24 272:8 273:15 rights 42:8 53:9 67:22 67:24 144:11 217:11 258:15 rings 182:18 rip 152:9 176:9 ripped 141:12 228:22 272:15,23 rip-out 229:5 rise 139:14 rising 143:19 risk 152:15 213:4 Riverdale 76:22 road 117:11 Rob 78:18,19 130:24 181:6 266:3,8 Robert 1:16 3:12 rod 228:1 role 81:11,16 82:3 90:15 93:18 129:20 roll 89:21 100:22,23 129:20 rolled 235:7 room 139:5 161:7 root 227:25 rotated 124:3 roughly 30:4,5 31:21 38:5 73:23 128:2 round 39:16 route 212:24 routing 95:13 royalties 119:17 176:16 royalty 128:7 257:11 RPR 274:7 RS 82:17 83:22 84:2,6 262:21 RSU 83:21 RTC 4:3,11 6:2,3,21 9:8,8,23 12:16,21 13:21 14:9 15:22,23 19:18,23 22:4,11 23:25 29:6,24,25 39:2 40:25 43:20 52:10,14 53:4 61:23,25 62:9,13 64:14 77:18 78:3 79:16 80:8,9 81:21 86:1,4 99:12,13,21	101:6 102:12 103:5,6 104:25 110:9,11 111:1 116:8,9 131:25 132:2,4 133:5,6 141:7 145:8,16,23 146:1,6 146:10,18,24 147:6,8 148:1 149:11 171:22 171:24 173:17 174:2 175:9 176:4 179:7,10 179:14,15,19,23 180:1,5,8,16,17,22,22 180:25 181:17,21,25 182:11 193:8 194:3,4 194:16,18 195:3,4,6 195:11 196:16,19 199:7,11,13,16,19 212:8 214:3 215:10 215:16,22 217:15 224:2,10,22 227:7 228:12,15 229:14,15 229:20,25 231:2 236:11 238:1 241:19 241:23 242:4,17 246:16 247:2 248:12 252:25 253:9 254:11 254:14,19 255:1,12 256:2,8,20,24 257:3,7 257:20,25 258:2 261:6,11,19,23 264:25 266:10 267:22 268:3,14 273:17 RTC's 53:13 110:16 137:10 182:5 217:22 221:18 222:3 227:23 235:11 236:25 237:20 239:13 242:11 249:11 259:23 rule 7:23 258:13 ruling 8:11 236:19 255:3,4,10,17 rulings 239:9 Rumpelstiltskin 52:8 52:10,13,16,20 run 12:24 127:7,13 138:25 143:16 152:14 152:15 158:19 171:16 229:5 237:24 270:5 273:4 running 15:16 17:4 22:4,22 81:25 94:25 112:7 118:11 119:6 131:18 142:9 153:9 158:4,25 170:16,16 171:8,12 runs 5:12 <hr/> S	sale 13:14 33:19,20 45:7,9,13,18 46:10 49:11 50:5 77:2 261:24 264:3 samples 76:23 Sangamon 7:12 9:9,12 13:24 20:9,16 62:15 96:19 97:12 103:18 103:22 105:24 106:21 108:11 109:22,23 110:5 114:17 115:9 157:8,21 162:1 199:24 204:20 211:19 212:2,9 214:4 216:12 216:13,14,20 217:17 220:4 224:22 226:4 227:23 228:16 230:20 231:1 235:11 239:14 241:21 262:12 272:7 sat 28:6 satisfied 39:24 saturated 139:19 144:3 save 142:3 255:25 saw 31:17 32:11 121:18 139:14 244:9 saying 10:3 57:10 98:14 165:9 174:2 214:24 255:14 says 4:13 7:10 160:6 161:2 162:25 201:8,9 204:13 230:10 245:8 256:18 259:5 263:9 scale 116:25 scanner 245:14 scans 87:5 128:24 Scattered 11:6,7 19:15 20:13 21:21 28:1,8,10 28:15,16 29:14,16,21 30:5,7 31:11,15 32:7 32:25 33:2,3,4,6,8,10 33:16,18 34:5,14,17 34:22 37:6,8,10,11,17 38:2,7,15,23 39:10 40:7,13,16,19,20,23 40:24 41:3,18,24 42:3 42:6,20,22,25 43:9,13 43:17,23 44:1,20 45:24 46:7,17,19 47:5 47:6,16,23,24 49:22 49:25 50:2,14,18,20 50:22,24 51:11,17,21 52:7,25 53:5,10,17,22 54:5,9,13,21 55:5,14 56:18,19,21 57:10 58:14,21,22,23 59:22 59:24 60:18 61:9,20 62:1,8,13 63:11,14 64:9 65:22 66:5,9,11 66:14,25 69:16,19 70:22 71:1,4,6,14,19 71:21 72:2,6,8,12,15 72:23 73:2,3,4,9,13
--	--	--	---	---

73:16 82:8 118:2 136:15 168:11 180:14 182:25 183:18,21,25 184:6,17 192:7 193:11,12,24 194:1 194:19 195:2,17 196:2,7,8 204:19 205:2,14 206:21,24 207:9,14,19 208:7,12 208:23 238:7 Scattered's 29:19 31:24 34:1 46:24 47:9,12,21 scenario 66:11 142:16 174:25 212:23 213:8 273:5,5 scenarios 132:11 schedule 39:19 Schmidt 1:12 3:3,4 7:2 7:14 8:14,18,23 174:12 SCHNEIDER 274:7 schools 75:21 Science 75:5 scope 18:24 144:18 225:25 screen 61:1 201:19 screwed 35:25 scroll 202:6 225:15 232:4 248:2 scrubbed 12:9 263:24 264:3 scrubber 178:13 scrubbing 92:20 96:9 170:2 261:3,7,15 scrutinized 22:15 scuffed 151:22 seal 222:9 sealed 222:9 second 20:15 30:19 35:20 57:22 88:24 89:3,19 91:5 119:20 127:12 147:15 148:4 148:7 174:16 221:8 225:16 265:7,13,13 267:2,8 secretary 51:17 173:13 section 5:25 186:6 201:18 202:2,18 225:1 237:7 sections 139:3,6 secure 108:20 securities 47:22 security 34:10 36:6,16 36:20 39:8,8 40:12 42:9 97:9 98:12 118:17 120:15 202:23 205:3,8 210:19 211:4 211:15 see 15:5,6 35:14,19 36:10 37:2 52:25 57:2,5 60:16 73:5 83:21 84:14,19 86:19	88:7 94:22 100:20 113:22,23 124:6,7 151:23 153:10 159:20 175:25 186:16,18 202:8,14 213:14 216:8 221:10 222:1 223:24 240:13,18 250:3 256:11,18,22 seek 10:5 seeking 71:19 72:14,16 72:23 seeks 21:24 seen 100:25 165:1 244:2 247:24 248:4 269:18 sees 100:24 selected 29:4 selection 115:24 sell 15:9,12 16:10,10 31:3 45:2 48:10 144:11 155:1 229:20 selling 15:10 sells 69:7 semiannual 87:9 220:24 send 151:3,5 261:1 senior 76:10 sense 109:12 115:16 180:10 sensor 269:12,13,15 sent 122:8 130:18 238:9 separate 180:23 September 125:1 158:19 250:3,11 series 63:4 73:21 83:8 seriously 206:9 serve 70:12 served 28:18 77:9 service 32:15 89:3 171:17 262:5 263:10 services 4:25 26:2 81:1 84:10 87:23 88:2 91:25 92:3,12 93:2 194:3 263:4 set 38:3 116:21 161:8,9 225:2 sets 11:23 251:24 252:2 settled 120:3 149:23 260:13 265:9 267:24 267:25 settlement 53:2,8,19 138:1 144:10 149:3 155:12 174:22 180:13 187:12 198:7,19 258:13,16,17 259:5 259:16 settling 268:8 seven 106:25 108:1 125:3 265:20 Sexton 12:16 144:10 shallow 140:2 143:25	shape 135:5 share 33:19 85:19 147:13 176:5 235:24 236:5 shareholder 28:12 50:22,24 sheet 42:21 43:1 124:15 245:15 Shelton 254:22 shield 10:24 14:22 101:14,15 106:13 120:23 212:22 214:8 shields 106:15 shoes 65:16 short 10:13 38:7 50:3 195:1 219:19 262:25 shorten 73:6 shorter 270:24 shortfalls 196:23 shortly 37:23 46:14 114:21 243:5 short-term 93:12 show 11:21 17:18 18:11 18:21 22:1 23:4 24:7 24:12 35:12 36:9 57:3,16 136:5 236:13 255:23 showed 57:8 244:4,8 showing 13:25 48:15 238:10 shown 172:15 shows 115:5 117:7 121:7 124:25 136:22 164:19 shut 137:20,22 152:8 230:1,8,19 268:19 269:13 shutdown 269:20 side 36:9,10 77:4 sides 45:21 sight 88:7 sign 15:25 102:13 151:2,5,8 205:25 signed 46:10 58:24 59:22,23 81:8 83:21 83:22 84:20 86:16,22 91:14 151:1,1 210:18 210:19,22 211:11,14 221:1 245:7 significant 46:18 49:8 132:9 219:24 221:12 272:1 significate 150:22 signing 264:11 silted 139:11 similar 77:17 83:17 89:22 92:11 96:13 97:14 98:2 120:25 122:7 143:17 149:4 163:8 165:19 215:17 similarly 33:14 simply 5:16 119:7	226:16 259:5 single 228:2 229:5 sir 42:21 43:13 44:12 72:23 234:8 235:15 sit 31:5 38:4 45:17 51:13 53:7 56:25 67:14,17 136:3 191:24 192:6 205:19 209:10 site 6:3 9:19,21,24 10:2 10:8,16 11:1,12,18 12:7,17,25 13:1,9,12 13:20 14:5,10,11,12 14:13 15:1,24 16:4,6 16:8,12,16,17,19 20:16 23:13 76:12 88:17 89:9 91:23,25 92:11 96:24 97:1,7,8 97:11,25 98:15,18 99:14 101:21 102:4 103:22 104:21 107:20 108:11,12,13 109:1,1 110:12 111:25 112:8 112:13 114:18 116:13 119:13 122:20 123:1 126:3 127:3 128:14 128:17 130:25 132:25 133:7,8,9,9 134:5,10 134:21 135:17 136:7 136:8,12,18 137:4,6 138:20,21,22,24,25 140:10 142:9 144:11 145:22,22 146:2,6,7 151:11 154:16 156:3 156:13 166:6 171:4 182:6 188:17,20 189:23 201:1 202:20 204:15,16 216:17 218:7,16 219:4,12 229:12 231:3 235:11 235:21,24 237:1 238:1,8 253:11 264:21 265:16,20 266:1,5,7,11,17,25 267:4,6,17 268:18 269:22 sites 4:19 13:4 15:2,5,5 18:12 23:15 39:10,13 39:14,17,18,21 41:5,9 42:7 63:6 76:18 82:20,24 85:2 87:22 92:15 96:5,12,19 100:14 102:22 103:16 103:19 107:22,24 113:7 123:1 130:7 132:8 133:11 135:22 137:2 142:22 144:16 145:2 146:11,17 147:2,6,9 155:23 162:14 167:4 170:16 171:9,13 188:4,9 190:10,14,22 191:1,9	191:13,19 193:5,9,19 194:9 202:23 204:24 205:1 215:18 241:20 260:25 262:14,19 sits 51:8,10 sitting 7:20 47:20 situation 3:23 91:1,8 96:18 104:10 113:2 137:20 142:8,11 174:3 216:24 249:14 249:15 six 10:15 98:4 106:10 109:5 111:23 126:21 126:22 127:13,14 128:8 131:22 166:19 193:17 255:22 257:2 six-month 221:5 size 105:20 skip 226:16 254:7 256:14 skued 270:22 slip 121:5 Sloan 25:14,25 26:9 120:2 147:16 175:17 slowdown 269:20 small 9:20 12:17 14:5 14:24 58:1 97:18 smaller 84:13 Smith 183:16 smoothly 81:25 solar-powered 94:11 94:20 sold 33:15 50:7 77:5 229:14,15 sole 54:24 soley 1:15 3:8 solid 94:9 173:6 somebody 59:6 225:1 243:9 246:1 somebody's 216:9 somewhat 143:25 soon 11:20 16:14 148:18,20 149:15 168:2 sorry 15:3,23 27:18 32:2 46:4 55:15 58:22 59:9 100:8 110:12 111:22 114:1 124:7 126:9 154:23 162:16 176:4 186:14 214:7,13 219:9 229:10 232:8 240:23 246:20 269:9 sort 13:25 155:10 225:21 sought 20:3 23:17 240:12 sounds 28:25 53:14 65:5 187:17 197:1 260:17 source 63:21 105:21 117:23 191:22 192:8
---	---	--	---	---

192:10 sources 43:5 107:20 206:20 248:9 south 9:3 30:16 31:14 43:24 44:4,18 61:21 77:4 spark 228:2 sparkplug 88:20 sparkplugs 129:10 speak 7:5 19:11 219:16 259:19 specific 5:15 20:24 120:5 205:1 254:18 specifically 6:1 135:14 specifications 13:6 96:2 speculating 135:11 speculative 24:13 spell 27:16 74:15 spend 17:21 136:6 138:8 142:15 144:13 174:15 spending 168:3 spent 17:22 89:5 141:14,19 173:25 spin 47:16 spine 175:12 splits 209:7 spoke 159:3 spoken 130:14 spot 163:9 spreadsheets 63:4 Springfield 13:19 14:1 15:8 33:22 38:1 55:8 83:4,6 92:11,15 96:24 98:15 102:24 110:13 110:14,19 111:11 115:21 116:21 117:3 117:4 122:3 151:13 151:14,19,25 152:18 154:18 155:4 167:10 167:23 169:10,16 170:9,17 177:17,23 199:24 217:19 271:7 Springfiled 167:24 squared 109:6 squelching 143:20 stack 16:19,22 85:6,12 85:13 106:10 120:10 129:2 134:24 152:20 152:22 stacks 229:18 staff 79:13 175:17 stage 59:4 stand 65:25 99:8 standard 135:10 202:15 270:11 standards 95:10 135:1 135:3 159:4 261:24 standing 65:16 171:22 172:2,9,11,21 247:14 standpoint 177:3 stands 255:21	start 5:23 60:2 75:2 107:12 108:17,21 112:10 133:11 started 139:11 170:23 179:22,22 180:7 235:10 starting 83:9 158:15 242:14 starts 115:6 202:3 266:2 state 27:11 65:6 74:14 75:8,19 123:23 171:22 172:23 173:4 173:13,13 174:1,10 206:5 235:24 238:12 241:9 259:10 260:4 260:10,19 stated 267:16 statement 8:20 43:3,5 65:11 66:3 197:25 233:18,23 statements 8:17 42:23 62:25 207:14 states 1:1 122:16 206:3 static 127:20 128:22 stating 249:5 status 15:5,6 23:4,20 90:19 101:10 102:17 120:18 134:22 150:24 214:19 216:8 238:4 240:10 stay 25:10 stayed 76:11 Steinberg 1:14 3:8 132:17,20 243:2,13 246:1,8 stemmed 134:7 step 70:17 74:3 89:1 111:3,6,7 273:22 stipulated 21:12 23:8 stipulation 10:8 11:20 11:21,23 12:1 15:14 16:11 18:6 66:22 89:10 96:22 98:12 111:2 113:8,15 114:13 117:20 119:16 120:15 127:10,24 176:8 177:9,17 178:3 178:11 200:17,21,25 201:21 202:12 204:10 258:1,5,11 stipulations 9:14 stock 52:13 73:14,18,21 stopped 132:20 straight 197:2,22,23 strategies 69:6 strategy 69:3 straw 152:8 Street 76:13 146:20 147:5 strike 202:9 258:9 string 17:1	stripped 88:24 stroke 81:22 structure 105:18 structured 144:9 struggling 250:5,6 student 75:25 studies 116:19 120:8 stuff 128:14 sub 76:9 subcontract 202:12 203:2 subcontractors 193:18 subject 34:6 45:12 50:6 52:12 98:17 153:18 submit 243:6 248:6 submittal 101:13 102:19 submitted 23:24 101:8 102:18 122:17 209:16 209:19 214:7,10,14 submitting 118:25 subpart 202:21 204:8 subsequent 45:22 subsets 213:23 subsidiary 47:7 substandard 22:12 substantial 17:7 132:1 138:8 substantive 240:8 substituting 184:19 subsurface 137:8 152:13 subtract 168:23,24 169:17 170:20 subtracted 170:23 succeeded 77:17 successful 11:25 62:9 114:22 184:12 264:3 successor 29:2 such-and-such 197:24 sue 208:12,15,16 sued 73:2 259:10 suffered 81:22 sufficient 12:18 14:6 15:24 21:23 23:14 143:16 sufficiently 57:4,8 suggests 6:14 suit 268:9 sulfur 242:15 sum 161:23,24 summarize 75:22 177:8 summarizes 120:13 summarizing 75:3 summary 87:12 summed 161:25 summer 16:15 28:22 125:1 137:9 149:16 167:19,19 sundries 128:13 supervises 79:4 supplement 156:18	supplemental 95:14 supplemented 196:24 supplies 128:13,14 supports 122:15 suppose 109:25 216:21 263:12,17 sure 7:4 13:24 17:12 36:20 37:8 48:1 56:25 67:14,20 74:16 75:5,16 81:6,25 83:13 104:6 109:15 113:15 114:14 121:13 130:9 132:24,24 134:18 136:13,19 145:23 158:5 159:4 165:1 167:7 171:21 174:8 174:12 176:14 179:20 180:9 183:8,15,24 185:20 191:14,17 192:5,16 196:21 197:1 200:12 208:20 216:1 217:21 223:19 234:21 254:13 262:17 265:24 272:4 surface 87:5 128:24 144:1 221:19 222:4 222:21 surprised 176:22 208:9 surprising 16:24 surrounds 218:5 suspect 37:23 suspected 223:23 sustain 5:17 231:24 sustained 72:10 Swayco 264:8 switch 86:12 133:12 switchgear 218:4 229:17 sworn 25:12 27:8 74:10 74:11 system 10:7 13:2,5,7 14:16 35:18 93:22 94:5,5,6,13,16,17,18 94:19 95:3,6 96:3,5 96:21 97:2,3,6,8,16 98:3,7,18 104:3,5,24 107:15 110:20,22 111:2,25 115:5 118:9 128:15 129:6 139:4 139:22,25 141:23 143:6 152:5 153:3 154:5 170:1 171:6 175:6,7,12,21,22,25 176:11,22 178:12 200:5 218:10 225:12 228:20,21 229:1 237:1 239:13 240:11 242:12,18 246:18,21 247:4 249:12 253:1 253:11 259:24 272:14 272:23 systems 87:18 94:8	95:16,17 96:7,14 187:9 188:6 191:10 Szilagyi 17:24 132:12 133:25 134:16 144:8 249:5 <hr/> T T 48:22,23 table 25:1 27:4 take 13:11 35:19 46:15 54:8 58:8 59:18 86:6 89:20,23 91:25 94:15 105:17 113:14 123:20 128:16 139:3 156:20 168:22 174:21 178:23 182:9 184:11 201:11 202:5 205:6 213:15 221:23 231:24 242:8 271:6 273:25 taken 3:18 16:19 32:20 75:14 113:17 123:16 185:15 takes 14:15 90:2 107:6 109:5 217:13 talk 6:12 9:15 48:13 52:5 175:20 talked 67:4 68:24 69:22 131:4 148:8 149:4 181:2 188:10 193:6 198:4 203:21 216:2,5 216:6 218:13 228:17 230:15,21 231:2 249:13 262:21 272:5 talking 5:6 38:5 69:4 135:14 186:14 194:4 196:3 216:11 219:2 262:20 263:2 271:16 272:11 tap 13:15,17 tax 48:20 129:14 173:5 taxes 32:19,19,21 48:16 122:7 130:22 131:2 173:5 Taylor 86:20,22 101:4 140:19,20 216:14,16 246:16,21 247:4 248:13 249:12 264:12 team 80:22 95:19 Tech 75:6 technician 80:4 Technology 1:5 3:2,25 40:21 74:19 77:8,9 198:15 tell 43:12 59:15 61:4 63:2 67:17 70:18 83:11 104:3 113:20 121:2 134:6 162:11 187:3 217:6 233:6 250:1 269:1,5 ten 78:4 125:24 137:22 160:6 164:10 207:2 tend 147:16
---	---	---	--	---

<p>tentative 24:13</p> <p>ten-minute 178:23</p> <p>ten-year 63:7</p> <p>term 37:13 93:21,25 94:1,3 95:2</p> <p>terminate 105:2 185:11 186:3,22</p> <p>terminated 255:15,18 255:19 257:14,17</p> <p>termination 186:9,17 214:21</p> <p>terminology 257:18 258:4</p> <p>terms 5:2 53:15 157:21 158:15 202:11 263:18 271:16</p> <p>territory 21:11 83:4 159:22</p> <p>Terry 166:16,18,21</p> <p>test 35:11 106:11 129:2 134:24 135:2 152:22 213:19</p> <p>tested 35:18</p> <p>testified 6:18,24 25:7 32:1 43:16 44:7 48:18 50:13 104:2 166:24 181:23 183:4 188:14,25 189:14,21 190:6,7,23,25 191:8 196:5,16,22 199:21 200:7,14 203:25 204:17 206:16 210:8 213:9 224:6 225:19 239:4 254:9,10 256:2 260:24 264:19,24</p> <p>testify 5:9 8:3,7 11:16 21:19 27:1 65:3 66:5 191:7 197:24 246:9 266:9</p> <p>testifying 8:4 45:17 192:25 233:1</p> <p>testimony 5:20 6:16,22 7:6,19 8:5 10:3,4,12 10:22 11:4,9,20 16:6 16:22 17:25 18:7 23:3 24:11 25:3,5,6,8 25:10 44:19 111:22 166:17,19 197:18 204:15 207:6 255:21</p> <p>testing 16:19,22 85:6 85:12,13 120:11 152:20</p> <p>Texas 32:10 47:2 48:6</p> <p>text 58:2</p> <p>Thank 8:13,14,15 18:14,15 21:3,4,9 24:17,18 27:5,7 31:8 42:14 60:4,10 64:24 66:16 70:15 73:25 74:3,5 233:24 234:5 268:12 270:25 273:19</p> <p>Thanks 234:11</p>	<p>theory 243:21</p> <p>they'd 83:5 166:20 263:9</p> <p>thing 35:24 88:22 102:22 114:5 118:17 129:18 135:23 136:5 142:18,20 150:3 212:23 245:24 267:1</p> <p>things 11:24 12:5 16:21 17:4 35:25 56:4 94:7 119:15 123:18 128:19 136:3 137:25 143:10 165:5 194:10 238:13 265:8</p> <p>think 4:17,22 7:9 8:16 10:16,22 11:15 13:10 14:3,25 15:18,18 16:13,16,23 17:16,17 18:5,10,23 19:19 20:3 20:19 26:10 28:22 31:17,22 35:8,19 36:19 37:21 47:17 48:10,14 50:2,8 63:7 65:7 66:8,9 67:4 68:1 68:24 69:18 70:23 71:5 73:21 82:12 83:1 84:12 86:3,7 88:14 89:6 90:4,6 91:10 92:21 97:17 98:15 101:3 106:25 109:13,14 115:4,6 120:12,12 122:16 124:18 126:5 135:6 136:2,5 137:7 138:5 138:14 139:8 140:8 140:11,13 141:14 143:10 144:9 147:13 147:15 151:15,20 152:1 153:5,16 154:12 157:12 161:25 162:20 165:4 166:10 166:19 172:10,22,24 174:22 175:5,24 180:10 182:2,3 183:4 183:17,18 184:10 185:19 186:13 188:2 188:24 189:14,21 191:7 196:5,11,16 200:7,14,21 201:3,6,8 201:16 203:1,7,10 204:25 207:23 208:8 208:15 209:25 215:7 222:14 223:21 226:6 227:13,18 230:21 231:8,21 232:17,23 232:25 233:13 236:1 236:2 242:21 245:4 249:3 250:18 252:14 252:18 253:16 254:7 254:10 262:5,22 263:21 267:14 268:7 271:17,17,24</p>	<p>thinking 160:18</p> <p>third 16:7,15 18:3 63:21 89:11,16,21 117:8 119:24 148:8 174:18 222:17 225:16 256:14</p> <p>thought 127:6,12 172:12 173:22,24 186:11 197:21 220:13 258:19</p> <p>thousand 128:2 175:24 192:16 193:3</p> <p>three 10:23 13:3,4 20:14,19 32:11 38:23 53:25 69:12 91:7 131:24 165:12 170:16 170:24 171:9 215:8 219:17</p> <p>throes 264:11</p> <p>thrown 176:3</p> <p>throw-off 191:25</p> <p>thrust 231:25</p> <p>Thursday 268:7</p> <p>ticket 137:5</p> <p>tie 156:15 200:4</p> <p>time 8:6 9:1,23 10:17 11:2 12:21 13:11 14:4 28:13 33:2 35:1 36:11 38:9 39:5 43:7 43:7 45:7,11 47:18 49:16 54:18 55:11,15 55:17 69:14 70:6,7 76:8 77:6 78:6 85:24 92:2,3 93:2,10 97:1 97:15 98:7,13 101:16 103:8,9 104:1 105:21 105:23 107:5 108:4,5 109:4,16 112:9,13 114:24 120:23,25 131:18 132:19 139:17 140:17 142:4 146:14 158:23 159:1 168:7 180:4 182:17 183:14 184:18 185:12 186:22 187:18 207:4 212:22 214:9 216:10 217:7 217:13 219:2,3,19,24 220:2,3 221:12,19 228:10,19 229:24 240:24 250:6,10 257:13 262:1 268:25 270:24 271:15 272:12</p> <p>timely 23:23 103:7 120:22 122:9 265:11</p> <p>times 164:21</p> <p>timing 10:11 103:14</p> <p>Title 211:20,22 212:1 214:3 218:12,15,17 218:25 219:3 230:3,4</p> <p>today 5:6 9:15 20:11 24:8 26:7,23 45:17 47:20 49:25 59:14</p>	<p>70:21 81:3 85:3 100:15 102:23 132:23 184:13 191:24 192:6 195:25 199:19,22 205:9,19 209:10 241:3 259:19</p> <p>told 62:23 65:15 208:3 272:13,21,22</p> <p>tomorrow 66:24 268:6 273:25 274:2</p> <p>top 94:11,20 124:11 125:25 131:6,7,10 140:23 143:18 148:20 151:22 162:12 250:13</p> <p>topic 60:3</p> <p>torture 48:4,4</p> <p>total 169:14,15 177:8</p> <p>tough 135:5</p> <p>toughest 138:25</p> <p>track 234:19</p> <p>tranches 11:10</p> <p>TRANSCRIPT 1:8 274:7</p> <p>transfer 71:4 72:17,17 73:7 99:20,23 106:17 215:16,21 216:4,15 217:1 271:21,21</p> <p>transferred 6:21 71:3 73:13,15,20</p> <p>transferring 99:20</p> <p>transfers 87:8 100:14</p> <p>transition 193:15,17 194:6 195:14,15</p> <p>transitioned 181:3</p> <p>transitioning 181:12,13</p> <p>treatment 82:21</p> <p>tree 175:7,12,16</p> <p>tremendously 148:12</p> <p>trial 3:2,19 36:1 60:7 127:6 195:15 225:24 255:2,22 257:2</p> <p>trials 7:6 194:11</p> <p>triangle 137:16 152:12</p> <p>tries 69:11</p> <p>triggered 137:7</p> <p>Trinity 80:12 81:8 85:14,19 86:6,10,17 87:1,3,14 108:19 128:23</p> <p>tripping 9:1</p> <p>trouble 5:12</p> <p>true 45:13 47:2 54:2 56:1 84:20 179:21 183:11,12,15,21 184:16 185:11,14 196:9,11 205:12 210:9 219:10 229:11 229:23 232:3 242:4 254:14,25 255:12 256:7 257:25 258:10 259:9 260:7 267:21 274:7</p>	<p>trust 1:13 3:5 8:24,25 9:23 10:4,9 12:2,10 14:18 16:8,9 19:1,17 27:15,22 28:1,3,3,4 28:13 29:5,14,18 38:10,13,20 39:3,4 41:6 53:24 54:22 56:4,14,21,22 57:2 58:19,25 59:16 60:14 60:18 61:9,13,16 70:13 74:22,25 79:18 91:18,19 92:8 93:4,5 96:20,23 99:4,17,21 101:7 102:16 103:17 114:12 130:2 132:2 146:7,18 148:5,6,17 149:14 173:17 174:5 181:20,20 182:12 183:1,9,13 184:1,3,14 184:17,21 185:8,12 185:13,21 186:3,22 187:1 196:20 207:2,4 208:18 209:25 263:16 271:10</p> <p>trustee 1:15 3:9 9:22 12:19,20 14:7,8 15:25 16:1 17:1,2 18:20 19:16 20:4 28:19 29:2 41:12 53:3,3,11 53:12,12 54:19 56:6,9 59:5 60:19,23 61:10 61:15 64:20 65:16 67:19 70:4,5,10,12 74:21,24 93:5,7,9 132:12,20 140:4 141:15,25 142:2 144:8 180:15 182:11 182:15,19,22 183:6 185:7 186:10 187:14 194:13 195:12 196:19 197:16 198:20 208:17 208:19 229:3 243:2 247:6 248:15,16 249:1 250:12 257:12 272:11,25</p> <p>trustees 17:20,20 56:23 57:11</p> <p>trusteeship 141:25 142:1</p> <p>trustee's 20:10,12 273:9,10</p> <p>trusts 182:20,23</p> <p>trust's 29:10 69:23,24 176:5 205:4</p> <p>truth 225:4 231:19,23 239:2</p> <p>try 8:24 17:12 18:18 45:2</p> <p>trying 45:21 73:20 134:11 193:2 219:1,4 238:19 239:1 247:22 258:15</p>
---	--	---	--	---

tune 170:21 171:14 turbine 96:9 116:9 138:15 143:7,10,16 217:23 turbines 94:25 turn 23:15 turning 100:5 tweak 160:19 tweaked 160:18 twelve 10:15 Twenty-five 122:12 two 7:6 20:5 29:23 43:9 43:13,14,18,20 45:10 46:16 52:1 54:9 56:4 61:8 69:12 104:19 111:6,7 116:25 117:2 117:4 126:22 127:13 127:14 131:18 143:10 145:1 147:4,18 151:14 153:9 154:6 158:25 160:5 162:10 163:6 166:12 167:1 167:25 169:10 170:19 180:23 211:24 219:22 252:10 256:12 272:17 273:3 two-and-a-half 31:21 two-thirds 69:13 type 95:8,12 103:18 142:16,17 150:3 158:4 160:13 161:21 202:16 245:18 typical 42:23 239:25 typically 219:20 234:19 251:18,23	122:4,6 180:18,21 183:3 226:7 247:13 252:23 259:16 271:5 understood 44:19 248:9 251:16 unfortunately 81:16 257:12 unique 4:3 unit 6:11 120:11 UNITED 1:1 units 154:6 University 75:7,8,9,12 75:19,20 78:20 123:24 unknown 132:23 unnecessary 271:22 unquestioned 24:8 unrelated 16:8 100:14 unresolved 253:25 unsigned 209:22 updated 220:17 upgrade 99:1 uptime 158:23 159:7 269:3,3 270:10,11 urge 226:15 use 22:19 33:9 48:4 85:12,13,15,22 92:18 115:23 135:19 159:17 192:11 204:23 220:15 258:16 262:9,12,14 262:15,18,23 264:12 uses 43:5 95:13 165:10 usual 263:5,10 usually 94:7 106:9 129:6 utility 94:21 116:17 125:13 128:3 237:14 237:15,17 264:4 utilize 32:25 33:16 163:4 utilized 141:22 157:20 165:9,15,22 utilizing 92:13 115:19 165:16 175:21	22:2 83:18 85:2 87:11 92:14,23 123:11 127:22 159:14 164:2 221:7 254:11 254:12 258:11 259:22 262:4 264:20 271:7 273:11 vehicle 187:4 veil 70:20 71:1 vents 94:11 venture 48:14 49:8 versus 117:1 vertical 111:18 vice 77:16 Vince 16:5 81:21 82:1 129:12 265:15 266:9 266:22 violation 142:23 145:17 222:15 230:13,14,16 234:18 247:16 248:5 250:20 251:1,6 253:10,24 violations 22:23 138:23 189:3 190:24 225:10 249:9 251:10,23 259:23 virtually 85:7 virtue 53:8,19 visits 15:4 void 271:8,20	222:9 229:4,6 237:24 257:12 260:14 265:16 268:23 waste 1:17 3:11 9:10 12:24 54:1 76:7,9,11 76:12,17,20,23 77:3,7 82:19,20 91:25 94:9 128:1 139:2,5 144:10 146:13 149:6 164:15 166:23 173:6 272:19 water 85:8 139:16,19 139:21 143:18 149:6 207:24 Watson 80:3 82:6 131:1 181:7 266:4,8 Watts 13:21 14:2 20:22 104:8,20 141:1 way 17:21 34:7 41:20 59:4 75:12 82:5 94:21 96:6 112:10 117:23 143:4 149:21 160:11 162:21 166:7 195:10,13 230:16 245:10 272:2 wear 88:20,21 89:24 weather 148:18,20 149:16 168:2 website 124:23 163:20 264:9 Wedoff 1:9 53:2 week 15:4 98:19 155:13 171:19 Weeks 80:7,7 81:4 181:8 weight 4:7 welcome 25:10 wellhead 87:4 94:20 128:24 147:21 148:15 152:19 wellheads 224:4 wells 12:23 14:24 15:1 30:16 31:14 32:9 33:10 43:24 44:4 61:21 94:10,11,12,13 109:15 137:22 138:1 138:2 139:10 140:2 141:10,11 143:25 148:14 218:2 228:23 230:23 well-exceeded 270:15 went 76:3 90:21 104:16 104:18 139:17 143:9 151:22 159:15 172:8 172:18,22 174:24,25 177:13 178:8 180:19 207:6 213:19 227:22 229:24 236:1 248:8 255:2 263:7 273:11 weren't 13:16 154:1 181:16,21 220:4 237:16,21 272:6,9 West 31:14	Westchester 146:16,21 147:5 we'll 8:20 15:19 42:14 58:8 60:3,8 89:21 103:3,8 108:17,17,19 118:13 133:12 134:20 148:9 149:15 151:11 160:19 162:6,8 165:7 178:21,23 196:13 212:3 223:15 226:20 255:25 274:1 we're 7:6 8:19 9:5,14 13:23 14:2 59:4 80:18 81:2,11,15 85:2 90:14 97:6 102:23 108:13 112:1 120:22 129:1 131:18,21 132:23 135:23 150:25 151:3,10 153:5 158:6 160:16 168:2,19 169:18 170:8,16,16 174:3 181:11 184:13 193:7,9,16 194:4,6,9 195:13 200:4 206:14 209:5,6 264:6,9 269:6 we've 14:3 20:18 45:1 52:4 59:17 82:2,18,24 83:1 84:12 88:7 89:11 93:6 96:4 132:24 154:1,8 156:7 159:5 174:15 195:25 230:21 241:3 247:20 254:9,10 264:10 270:10,14,18 whatsoever 19:9,12 22:8 207:18 Wheatland 146:14 190:7,15 white 193:16 wholly-owned 47:7 76:9 William 79:14 willing 12:20 14:9 16:1 17:20 41:25 42:3 66:11 93:17 263:9 willingness 18:22 Wisconsin 76:20 78:20 wish 33:12 wished 39:22 withdraw 58:5 withdrawn 238:5 withdrew 238:14 witness 2:5 5:9 6:8 7:3 7:8,8 8:4,7 24:19,25 24:25 25:12,22 26:9 26:12,13 27:8,19 30:20 31:1 37:19 42:15 48:24 58:9 59:9 60:24 65:8 68:13,17 70:22 73:8 73:11,14,19 74:5,6,7 74:10,11 100:25
---	---	--	--	---

126:11 150:10 163:1 178:22 179:4 186:18 197:4,9 203:18 225:6 232:4 233:13 234:1,5 234:8,11 236:21 239:10 240:18,23 244:8 263:6,12,20,23 264:1,5 273:23 witnesses 24:21 25:7 word 48:5 184:11 205:6 work 14:21 17:9 22:17 22:20 25:19 64:14 75:10 76:3 85:18 87:12 88:15,16,19,25 89:8,15,18 90:12 106:3,6 114:6,15,16 117:22 119:25 120:1 120:8 123:20 129:1 148:6,13 149:10 156:19 176:23 177:4 194:13 196:18 202:20 202:24 204:12,15,16 215:13 262:18 266:11 272:19 worked 10:19 76:1,1 78:22 159:10 198:22 235:19 265:20 working 16:13 80:8 88:6,23 93:15 134:15 149:15 179:22,22 180:4,7,15,16 194:9 209:6 214:15 243:1 workman's 129:24 works 26:16,17 83:13 180:21 215:12 266:3 world 78:16 worth 30:6 31:19 44:9 44:25 229:7 wouldn't 72:7 103:7 110:1 135:11 140:18 161:17 191:23 213:24 222:21 262:14,18 266:24 writing 58:16,18 87:6 251:9,18 written 114:14 202:19 wrong 83:24 126:7 174:13 210:12 238:7 260:24 264:23 wrote 68:17 Wyandot 146:14 190:7 190:15	92:17,20 106:22 107:9 109:10 115:11 115:15,18 116:9 121:18,18 126:8,19 127:9 130:11 132:7 134:7,18 135:4 136:19,19,23 138:5 138:11,18 141:17 142:13 150:14 151:21 154:15 155:18 156:1 157:1,10 160:8 162:7 162:9,20 163:1 164:18,18,25 165:12 165:13,24 167:22,24 170:6 173:7,24 175:2 175:2 176:24 177:24 180:12 184:10 188:12 203:3 213:16 218:19 223:19 224:6,9 225:6 227:18 229:15 230:4 232:16 234:11 235:3 236:15 242:10 247:6 248:17 249:13 257:1 257:10 266:12 271:9 271:9 year 11:11 15:19 65:4 81:22 96:23 98:21,22 98:23 103:11 108:11 108:15,18,20 112:5 118:6,7,7,12 126:5,12 127:14,15 129:13 131:13,13,20 134:19 160:2 169:7,8,9 170:21 171:8,14 248:9 266:10 270:20 years 16:21 19:2 20:19 28:7 31:18 45:10 61:19 69:12 76:5,11 80:18,19,20 82:15,18 82:25 83:2 88:9 91:23 93:15 95:15,22 95:22,24 96:4 98:4 103:13 104:8 107:7 108:3,8 111:23 116:19 122:12 128:2 134:11 143:20 152:2 153:18 159:12 164:10 166:12,19 167:1 170:19,25 171:16 207:2,2,23 212:19 213:15 215:8 225:8 248:1 255:22 257:2 258:8 265:20 270:10 270:15,19 Year's 81:23 yesterday 130:19 York 163:22	\$ \$1 170:1 177:18 \$1.2 32:14 48:17 \$1.25 69:16 \$1.4 170:3 171:11 \$1.5 171:4,14 178:13 \$1.9 169:3 \$10 31:2 45:3 \$10,000 68:1 129:2 \$100,000 169:13 174:20 257:11 \$13.6 31:4 44:25 \$15,000 136:7 \$150,000 169:1 \$2.6 171:1 \$212,000 268:11 \$250,000 131:4 \$3 11:9 17:6 21:20 31:19,22 37:10,12 39:21 40:5,14,17,19 41:14,18,20 42:2 44:9 66:7,10,12,15 73:23 117:25 167:6 204:18 206:25 207:20 \$3,000 128:22 \$30,000 174:15 \$300,000 116:22 \$3500 128:16 \$4 30:6,8,22 260:11,20 \$400,000 97:17,20 169:19 170:12 \$405,000 256:19 \$449,000 98:7 \$450,000 171:5 \$5.7 31:18 44:9 \$50,000 90:6 \$500,000 15:15 32:15 97:6 115:5 116:12 \$60,000 66:22 67:1 119:17 167:15 \$600,000 17:22 140:2 170:21 171:9 \$700,000 32:16,25 49:2 \$8 164:10,11 \$80,000 172:24 173:2 173:17,25 \$800,000 171:7	209:23 210:1 211:12 237:8 258:14 1st 220:5 221:16 1(b) 202:6 1.25 118:8 167:8 168:9 1.3 97:11 1.4 170:13 178:6 1.75 168:19 1.95 171:6 1:00 1:7 60:3,5 10 61:19 82:15,18,24 83:2 86:13 88:9 91:23 270:9 10:30 1:6 3:1 60:7 273:24 100 52:13 122:16 170:19 269:6 11 17:1 67:13,16,18 80:18,20 87:16 91:12 95:21 132:12 140:4 173:21,22 229:3 231:6,8 11.5 231:7,10 110 112:21 137:14 12 1:6 80:19 93:15 121:17 159:12 270:19 274:5 12th 122:3,5 233:7 12-year 219:2 1206 223:15 13 60:22 83:10 92:4 186:8 13th 268:19 13.1 68:14 13.6 68:23 138th 76:13 14 224:16 14th 210:20 15 19:2 28:7 95:22 217:7 223:13 15th 210:19 15,000 136:8,11 150,000 170:19 16 66:24 67:1 167:15 220:12 17 95:24 179 2:8 180 105:19 107:16 109:2,22 271:18 180-day 109:3 19 236:16 1980s 51:24 1984 75:7,24 1989 75:24 76:6 1992 28:3 1993 80:9 1995 13:22 77:7 81:22 179:8,23 1996 15:22 80:19 159:12 1997 78:13 79:15 80:20 1999 77:17 80:5 134:25	180:2 2 2 84:17 100:6 114:6 202:3 211:12 221:9 2nd 120:22 121:6,9,23 122:2 2.2 169:22 170:23 2.3 169:20,22 2.6 171:2 200 31:14 2000 44:14 80:5 2001 77:17,19 179:11 2002 9:22 21:8 134:20 143:9 219:6 232:11 233:7 234:17 2003 171:1 2004 137:10 144:9 219:25 220:1,5,6 221:13,16,16 227:7 227:14 228:19,19,24 229:1 231:2 272:24 2005 138:23 139:10 173:24 219:25 220:1 220:25 227:17,19 228:20,25 229:24 235:9,14,16,17 237:21 250:3 272:24 273:1 2006 28:23,24 53:1 120:22 121:6,9 122:2 182:14 186:25 187:9 190:21 198:24 229:22 236:12 237:12 267:22 268:13 2007 48:15 49:13,15 87:21 122:3,5 124:22 198:17 2008 1:6 126:21 128:25 131:14,22 158:16 167:7 169:1,2 234:16 268:20 270:20 274:5 2009 108:14 131:18 170:12 2010 108:22,23 169:24 170:8,15,16 2011 10:17 166:12 2012 166:13 2013 11:15 112:1,7 166:11 171:1,2,3,10 2014 112:2 171:12 2015 11:15 117:8 171:15 2016 171:16 2018 131:14 2020 93:20 164:13,22 171:16 220 268:11 224,000 268:12 24 239:7 25 89:7 153:18 25th 65:4
X X 2:2 217:7 XYZ 59:17,18	Y yeah 6:8 35:6 48:8 57:14 75:16 78:19 79:4,22 81:6 82:1,13	Z zero 72:25 73:2 160:20 zips 152:7 zone 139:19 144:3	0 04 272:15 05 17:23 250:11 272:5 272:16 06 75:1 07 32:12 08 158:18 169:5 09 169:6,7,9,15,21	1 1 57:20,21 60:20 121:4 164:6 184:24 185:17 185:20,24 202:18

25,000 89:6 182:8 267:17 250,000 118:12 144:12 167:11 177:11 26 223:22 242:8 26th 13:21 264 2:9 269 234:15 27 2:6 100:3,7,8 102:1 243:19 27th 250:3,11 271 2:8 28 100:3,7 101:25 148:24 28th 171:20 220:25 234:16 29 124:15 247:7,24 29th 220:6 221:16 234:16 <hr/> 3 <hr/> 3 21:22 30:5,8,21 204:8 221:23 222:12 234:6 235:4 3rd 9:21 21:8 3,000 128:16 30 9:20 15:22 89:20 124:16 163:16 217:7 248:20 30,000 89:5,7 300 128:5 300,000 15:15 31 249:22,23 31st 146:20 147:5 32 253:14 320 117:5 330 30:16 31:13 43:24 44:4 61:20 34 157:3 35 122:16 124:1 126:13 127:3 35434 1:4 3:2 36 126:10 127:3 162:16 365 21:15 37 162:16 38 165:3 <hr/> 4 <hr/> 4 80:9 4th 268:19 40 139:14,17 400,000 169:25 178:3 401 67:5 407 44:18 67:8,9 68:9 408 258:13 42 2:6 449,000 178:12 45 89:20 450 164:20,20,21 170:1 47 113:18 201:23,24 477,000 131:20 49 255:24	<hr/> 5 <hr/> 5 100:6 5.2 125:5 126:23 5.4 186:7,12,15 50 34:24 36:4,5,8,13 123:13 139:14,17 164:13 210:6,13,14 210:15 211:8,11 256:11 50,000 174:18 50-percent 50:24,25 500 221:20 222:4 223:1 500,000 117:1 118:8,9 176:8 52 34:24 36:5,13,15 210:6,15 211:7,11 <hr/> 6 <hr/> 60 38:8 217:8 60,000 129:13 266:10 600 147:17 64 2:7 66 2:6 69 121:2,4 <hr/> 7 <hr/> 7 1:15 3:8 5:25 17:2 53:3 67:13,15,18 132:15 171:7 173:20 175:25 180:15 187:13 198:20 201:13 250:12 7.3 60:22 186:10,11 70 269:5 71 2:6 36:1 72 121:2 74 2:8 75 140:23 75/25 160:19 750 171:4 <hr/> 8 <hr/> 8 5:25 83:9,16 129:2 80,000 174:7 800,000 175:25 83 75:25 85 30:4,8 31:16 32:1 33:19 44:21 85-percent 46:8,21 <hr/> 9 <hr/> 9 27:15 87:21 90 97:7,20 105:19 114:16 115:3 119:19 127:10 160:9,10 202:18 271:18 90s 28:5 78:9 218:15 90-day 98:10 111:7 900,000 170:7 92-7163 1:13 3:5 27:22 96 9:20 269:3 270:11 270:15,16,18	97 80:17 98 270:10 99 1:4 3:2		
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EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Resource Technology Corporation,) No. 99 B 35434
) Chicago, Illinois
) 9:30 a.m.
 Debtor.) February 13, 2008

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE EUGENE R. WEDOFF

APPEARANCES:

For the Trustee: Mr. George Apostolides;

For IIT: Mr. Gregory Jordan;
 Mr. Peter Schmidt;

For Allied: Mr. David Bohan;
 Mr. Robert O'Meara;

For the City and County
of Peoria: Ms. Linda Kujaca;

Court Reporter: Amy Doolin, CSR, RPR
U.S. Courthouse
219 South Dearborn
Room 661
Chicago, IL 60604.

I N D E X

1					
2					
3					
4	Witness:	DX	CX	REDX	RECX
5					
6	Leon Greenblatt	10	23	48	
7	Patrick Sloan	54	91	106	
8	Michael Reed	123	167	176	
9		165			
10	John Connolly	177			

1 THE CLERK: Taking up the court's
2 10:30 set matter, Resource Technology Corporation,
3 99 B 35434.

4 MR. JORDAN: Your Honor, Mr.
5 Apostolides and I had a conversation after court.
6 And Mr. Apostolides, correctly I think, wanted to
7 clarify something with me.

8 Mr. Connolly testified that he was
9 getting paid by RTC. It's not the debtor. It's not
10 the same FEIN number. It is not any of the parties
11 to this proceeding. But Mr. Apostolides, I think
12 wisely, wanted to make sure that there wasn't anybody
13 on the side incurring debts on behalf of the debtor.
14 And that's not the case. No payroll is being paid
15 under the FEIN, no payroll tax liabilities are being
16 incurred.

17 THE COURT: At earlier stages in this
18 case, the question of what happens to a corporate
19 debtor when a trustee is appointed was raised but
20 never resolved the issue became moot, and at some
21 point I may be called upon to resolve it.

22 But in the meantime, I understand that
23 the former owners, who are owners of the debtor, take
24 the position that the debtor, the entity, continues
25 to exist, even though there is a bankruptcy pending

1 with the debtor's estate. I am not sure how that
2 works, but I understand that's their position, and I
3 understand that the payments made to Mr. Connolly in
4 the name of RTC are not coming out of this bankruptcy
5 estate.

6 MR. JORDAN: No. It's not even coming
7 out of the same FEIN numbers.

8 THE COURT: I understand.

9 MR. JORDAN: It's not even coming out
10 of the same corporation.

11 MR. APOSTOLIDES: It's not coming from
12 the debtor.

13 MR. JORDAN: Right. But at some
14 point, I at least sense that you are interested in
15 that -- in nothing more than an academic issue,
16 that's fine. I am interested in that issue, too. So
17 at some point I think we -- I would like to resolve
18 that issue because I think it's fascinating.

19 THE COURT: Well, if it comes up in a
20 context that requires its resolution, I'll do it.
21 But I have too many real disputes to resolve to
22 engage in merely academic ones.

23 MR. JORDAN: I'm not saying that we
24 are going to have an advisory opinion.

25 THE COURT: Okay.

1 MR. JORDAN: I'm just saying I am
2 interested in the issue.

3 THE COURT: Now, in a similar vein of
4 understanding precisely what entities we're dealing
5 with, I did want to get clarification on one point.
6 Illinois Investment Trust is a common law trust; is
7 that not correct?

8 MR. JORDAN: You know, I'm not a trust
9 lawyer. It's a business trust, I guess, or a common
10 law -- I mean, it's a trust created under the laws of
11 Illinois with all the powers that a trust created
12 under the law of Illinois have.

13 THE COURT: Let me check something.
14 Is this trust created pursuant to any
15 statutory provisions of the state of Illinois or is
16 it merely an Illinois common law trust?

17 MR. JORDAN: I have no idea. I would
18 -- I would call it an Illinois common law trust. We
19 can brief the issue. I could check on that. It's
20 never been raised by any of the parties here. It may
21 be created under a statute. I just don't know.

22 THE COURT: Well, I think it may be
23 very important to find out whether this trust has the
24 capacity to sue or be sued, and whether this trust is
25 amenable to an involuntary bankruptcy proceeding. If

1 it's a common law trust, my understanding is that it
2 does not have the capacity to sue or be sued, it
3 could only take action in the name of the trustee,
4 and that it would not be subject to an involuntary
5 bankruptcy proceeding.

6 MR. JORDAN: You know, I'm not -- I
7 haven't updated the chapter that I'm writing on
8 involuntary bankruptcies yet, but I'm not sure that
9 even a statutory trust would be subject to an
10 involuntary bankruptcy.

11 THE COURT: Well, that may be an
12 important consideration in coming to a conclusion as
13 to whether Illinois Investment Trust can give
14 adequate assurance of future performance, in that if
15 it fails to do that, it may not be amenable to suit.
16 And if it fails to make payments, it may be
17 impossible for creditors, such as the counter-parties
18 to these agreements that are sought to be assumed, to
19 marshal its assets in an involuntary proceeding.
20 So...

21 MR. JORDAN: I'm not sure -- I would
22 respectfully disagree that they don't have the right
23 to sue the trust to which they have the contract.

24 THE COURT: It certainly raises a
25 question. To me it is a real concern. If, for

1 example, the creditors of the Illinois Investment
2 Trust could only attempt to sue the trustee for
3 whatever assets were in the trust as trustee, and the
4 trust had no assets because it had not received loan
5 proceeds from the entities, Scattered Corporation,
6 that have some contractual obligation to make those
7 loan proceeds, it might be impossible for the
8 creditors to take action that would force the trustee
9 to collect whatever rights it had.

10 MR. JORDAN: That's fine, Your Honor.
11 So what we will do is we'll agree that since the
12 contract's freely assignable, that one time -- and
13 there is no intentions of doing it otherwise -- we
14 will set up a corporation to accept the assets. It
15 will be called, you know, assuming the name is
16 available, Illinois Investment Trust Corporation.
17 And John Connolly will be the sole officer and
18 director of that entity.

19 And that way it can sue, it can be
20 sued and it can be brought into an involuntary
21 bankruptcy case. But it remains -- it will be in the
22 same position. And I presume that its shareholders
23 would be Scattered Corporation and Chiplease, Inc.
24 And that way we are dealing with the same parameters
25 that we have previously.

1 THE COURT: Well, I just raised the
2 question.

3 MR. JORDAN: That's fine. We will
4 agree to that.

5 MR. O'MEARA: Your Honor, we'd
6 obviously object to that. We're in the middle of
7 trial. It's their burden of proof, and they want to
8 change, you know, everything in the middle of the
9 case.

10 MR. JORDAN: Actually, we are not
11 changing to their detriment. We are changing to
12 their benefit, so I don't know what objection they
13 could possibly have.

14 MR. O'MEARA: Well, we were first told
15 this was going to be Scattered and Chiplase who were
16 taking these contracts. Then it was IIT. Now we're
17 talking about an unknown entity under an unknown
18 agreement. Obviously we would object to this.

19 MR. JORDAN: Actually --

20 THE COURT: I am not going to try to
21 resolve the question right now. I just raised the
22 issue.

23 MR. O'MEARA: Okay. Thank you.

24 THE COURT: And if it is not dealt
25 with in a way that gives me comfort that there would

1 be a potential for enforcement by counter-parties,
2 then I would find a lack of adequate assurance. So
3 we will see.

4 MR. O'MEARA: Thank you.

5 MR. JORDAN: That is, by the way,
6 agreeable to Mr. Connolly. We will take that action,
7 assuming that the assignment is made, the assumption
8 is made and the assignment is made.

9 THE COURT: All right. Anything else
10 to take up before we resume with the testimony?

11 MR. JORDAN: No, Your Honor.

12 MR. APOSTOLIDES: Judge, I just wanted
13 to clarify, we had -- I had discussed with Mr. Jordan
14 putting Mr. Connolly on the stand to raise this issue
15 of his employment and the FEIN of the entity that's
16 paying him. I assume that Your Honor is comfortable
17 with this discussion?

18 THE COURT: I will take that
19 representation if that's not in dispute among the
20 parties.

21 MR. O'MEARA: No objection.

22 MS. KUJACA: No objection.

23 THE COURT: All right. That's fine.

24 MR. APOSTOLIDES: Thank you, Judge.

25

1 THE COURT: Your next witness then,
2 Mr. Jordan.

3 MR. JORDAN: Leon Greenblatt.

4 (Witness sworn.)

5 MR. JORDAN: Your Honor, just to
6 clarify, because it became an issue at the NEC
7 deposition, Mr. Greenblatt actually does have an eye
8 condition, and he has difficulty with bright lights.
9 He had sunglasses on in court. He has taken them off
10 so he can testify. But that is the reason that Mr.
11 Greenblatt had his sunglasses on.

12 THE COURT: Okay. Go ahead.

13 LEON GREENBLATT, WITNESS, SWORN

14 DIRECT EXAMINATION

15 BY MR. JORDAN:

16 Q Can you please state your name and spell
17 your last name for record.

18 A Leon Greenblatt, G-r-e-e-n-b-l-a-t-t.

19 Q Mr. Greenblatt, have you ever heard of
20 Illinois Investment number 92-7163?

21 A Yes.

22 Q It's my understanding that you have a
23 relationship with Chiplase, Inc.; is that correct?

24 A Yes.

25 Q And are you the sole director and officer

1 of Chiplease, Inc.?

2 A Yes.

3 Q And is Chiplease, Inc., a beneficiary of
4 the Illinois Investment Trust number 92-7163?

5 A Yes.

6 Q And it's my understanding that you're a
7 director and majority shareholder of Scattered
8 Corporation; is that correct?

9 A I'm a director. I'm not a majority
10 shareholder.

11 Q Okay. Are you agreeable to, as a director
12 of Scattered Corporation and as sole officer and
13 director of Chiplease, to transferring assets from
14 Illinois Investment Trust to a new corporation along
15 the lines that I outlined with the court a moment
16 ago?

17 A That would be fine.

18 MS. KUJACA: Your Honor, I can't hear
19 the witness. Could we have him speak into the
20 microphone perhaps.

21 THE WITNESS: That would be fine.

22 BY MR. JORDAN:

23 Q Mr. Greenblatt, what is the nature of
24 Chiplease's business?

25 A Chiplease is a lender and lessor.

1 Q And can you tell me whether it has been a
2 lender since at least 1999 or not?

3 A Yes.

4 Q Okay. And can you tell me whether it was a
5 lender to Resource Technology Corporation?

6 A It was.

7 Q And at the time of the filing of the case,
8 was it, along with you and Banco Panamericana, the
9 sole secured lender?

10 A Yes.

11 Q Okay. Has it been a lessor since the year
12 2000 or not?

13 A Yes.

14 Q Okay. To whom is Chiplease a lessor?

15 A Chiplease is a lessor to dry cleaning
16 shops.

17 Q Okay. How long has it been a lessor to dry
18 cleaning shops?

19 A Since its inception.

20 Q How long has it -- I'm sorry.

21 Approximately how much are its current
22 assets?

23 A About 15, 16 million.

24 Q Now, yesterday in court Mr. Jahelka
25 testified with regard to a lawsuit relating to the

1 401 South Dearborn property. And I am wondering
2 whether you're aware of that lawsuit?

3 A Yes.

4 Q Okay. And can you tell me whether the
5 counter-parties to that contract sued for specific
6 performance or did they sue for something else?

7 A They sued for specific performance.

8 Q Have you ever heard of Gold Coast Realty,
9 LLC?

10 A Yes.

11 Q Who is that?

12 A They are one of the plaintiffs or actually
13 defendants who filed a counter...

14 Q Have you ever heard of 407 South Dearborn,
15 LLC?

16 A Yes.

17 Q Who are they?

18 A Likewise, they are one of the plaintiffs in
19 the --

20 Q And C&L Holdings, Inc., do you know who
21 that is?

22 A Yes.

23 Q Who is that?

24 A They are a defendant in one of our
25 complaints against those other two parties.

1 Q Okay. And do you know what the status of
2 those entities are at the current time?

3 A They filed Chapter 7.

4 Q Okay. Have you -- has 401 Dearborn owners
5 ever heard from the trustee in their cases?

6 A Yes.

7 Q And what was the purpose of that
8 communication?

9 A They offered to settle the specific
10 performance suit for \$10,000.

11 Q Okay. Is that acceptable to the owners of
12 the 401 South Dearborn property?

13 A No. We are just going to wait the 60 days.

14 Q Okay. Approximately how much each month
15 does Chiplase receive from its loans and leases?

16 A \$150,000.

17 Q Okay. And after expenses, what's the net
18 amount available to Chiplase to lend or what's
19 available after expenses?

20 A That was after expenses.

21 Q Oh, okay, \$150,000 a month?

22 A Yes.

23 Q It's my understanding that Chiplase is a
24 party to a loan agreement with the trust; is that
25 correct?

1 A Yes.

2 Q What, if any, commitments has it made to
3 the trust as a lender under those agreements?

4 A We agreed to loan up to 25 percent or other
5 amount as we might agree to of the total amount.

6 Q How would you fund that 25 percent?

7 A Cash flow.

8 Q Okay. And have you reviewed the
9 projections from Mr. Connolly regarding the timing of
10 when the cash flow is needed?

11 A Yes.

12 Q Do you have any doubt that Chiplease would
13 be able to meet its obligations?

14 A No.

15 Q How will it meet those obligations and
16 coming up with whatever, a quarter, \$3 million or
17 750,000?

18 A We would just pay.

19 Q Are you going to accumulate cash?

20 A If necessary.

21 Q Okay. Now, Chiplease, when did it become a
22 beneficiary of the Illinois Investment Trust?

23 A A year or two ago. I don't remember
24 exactly.

25 Q Would it have been in August '06?

1 A Sure.

2 Q Okay. What, if anything, did Chiplease
3 contribute to the trust when it became beneficiary?

4 A Property from the estate.

5 THE COURT: Beneficiaries don't
6 contribute property to trusts. Settlers do.

7 BY MR. JORDAN:

8 Q Is it a settlor?

9 A Yes.

10 MR. JORDAN: Okay. I apologize, Your
11 Honor. Thank you.

12 BY MR. JORDAN:

13 Q What did you do, if anything, to determine
14 that it was a reasonable investment for Chiplease to
15 make to agree to fund up to 25 percent or so much
16 other as determined to loan to the trust?

17 A We reviewed the cash flows of the project.

18 Q Okay. And based upon those cash flows,
19 what was your conclusion?

20 A That it was a worthwhile project to do.

21 Q Okay. Now, you have an extended history
22 dealing with RTC as a lender; is that correct?

23 A Yes.

24 Q Now, from a lender's perspective, taking
25 aside the role of any of the trustees, have those

1 sites been managed well, poorly or somewhere in
2 between in your view?

3 A Giving the constraints, they were managed
4 well.

5 Q Okay. Do you know John Connolly, the
6 president of RTC?

7 A Yes.

8 Q From a lender's perspective, has John
9 Connolly's overall management of these sites been
10 performed well, poorly or somewhere in between?

11 A Given the conditions, he has performed very
12 well.

13 Q Okay. What do you base that on?

14 A His knowledge of the events and his ability
15 to describe them to third parties and his actions
16 during the same.

17 Q Okay. As a lender, do you have any
18 problems with the leadership Mr. Connolly has
19 provided to RTC?

20 A No.

21 Q Okay. Are you familiar with any of the RTC
22 employees?

23 A Yes.

24 Q From a lender's perspective, have RTC's
25 employees performed well, poorly or somewhere in

1 between?

2 A They have performed well.

3 Q Okay. Do you know Greg Szilagyi, the

4 former Chapter 11 trustee of RTC?

5 A Unfortunately.

6 Q As a lender, did you have any problems with

7 the leadership that Mr. Szilyagi provided?

8 A Yes.

9 Q What were those problems?

10 MR. BOHAN: Objection on the grounds

11 of relevance, Your Honor.

12 THE COURT: It's overruled.

13 MR. JORDAN: Well, Your Honor --

14 THE COURT: It's overruled.

15 THE WITNESS: He was more interested
16 in seeing that his law firm was paid than to properly
17 handle the assets of the estate.

18 BY MR. JORDAN:

19 Q Okay. When, if ever, did Mr. Szilagyi
20 request that Chiplase or you or Banco Panamericana
21 advance any monies to fund operations?

22 A Even though we offered, he never did.

23 Q What did you offer?

24 A We offered to fund the ongoing requirements
25 of RTC, provided that the \$3 million from

1 Commonwealth Edison's electric generation was used to
2 pay the bills.

3 Q What bills?

4 A The bills that the estate had incurred
5 during operations of the sites.

6 Q And what did Mr. Szilyagi do?

7 A He did a settlement with Aquila and NEC to
8 pay them a large portion of the money and then had
9 them agree to allow him to do whatever he wanted with
10 the rest of the funds.

11 Q What happened with the rest of the funds?

12 A The court approved the settlement, but
13 didn't allow Szilagyi to use the funds without its
14 approval.

15 Q Do you know whether those funds were ever
16 used for the operations or were they used for legal
17 fees or were they used for something else?

18 A I can't tell you.

19 Q Okay. Do you know Jay Steinberg, the
20 Chapter 7 trustee of RTC?

21 A Yes.

22 Q As a lender did you have any problems with
23 the leadership that Mr. Steinberg provided to RTC?

24 A No.

25 Q Okay. Why is that?

1 A He was there to liquidate the estate, and
2 that's what he did.

3 Q Okay. When, if ever, did you have any
4 conversations with Mr. Steinberg about advancing
5 funds for operations?

6 A Never.

7 Q Okay. Have you ever heard of landfills in
8 Bloomington, Litchfield, Springfield or Peoria?

9 A Yes.

10 Q Have you ever been there?

11 A I have been to Peoria.

12 Q The landfill?

13 A Yeah.

14 Q Have you ever taken any role in the
15 management or operations of RTC, its business?

16 A Not in the last ten years.

17 Q Okay. Does Chiplase have any plans to
18 direct IIT or any of its personnel concerning the
19 development or operation of landfill gas collection
20 facilities at any of those landfills?

21 A No.

22 Q Okay. Does Chiplase have any plans
23 regarding the construction, installation, managing,
24 maintaining or operating of any gas-to-energy
25 conversion projects at any of the landfills?

1 A No, we are a lender.

2 Q As beneficiary of the trust or shareholder
3 of the new corporation, what, if any, involvement do
4 you anticipate you will have in directing John
5 Connolly, the I think trustee or soon to be president
6 and sole officer of the new corporation, regarding
7 the operation of the business?

8 A None.

9 Q All right. Is that a commitment on your
10 behalf?

11 A That I don't want to do anything about
12 that? Yes, absolutely.

13 Q Okay. Has Chiplase ever before financed
14 the construction, installation or operation of a gas
15 collection and control system?

16 A Yes.

17 Q Has it ever financed the construction,
18 installation or operation of a gas-to-energy plant?

19 A Yes.

20 Q How many times has Chiplase done that,
21 those things?

22 A However many times RTC has built them.

23 Q Now, my understanding is the maximum amount
24 under the line of credit is \$3 million. If the
25 business does well, would Chiplase consider making

1 additional advances?

2 A If it does well, we would. If it does
3 poorly, we wouldn't.

4 Q Okay. Is the purpose of the loan to the
5 trust or the new corporation to fund just these sites
6 or something else?

7 A It's to fund projects.

8 Q Just these projects?

9 A I believe so.

10 Q Okay. What's Chiplease's understanding as
11 to who will make the decisions regarding the
12 people -- person or people who will operate these
13 facilities?

14 A John Connolly.

15 Q Okay. On what do you base this statement?

16 A On the fact that he's the trustee or the
17 manager or the president of the new corporation.

18 Q In the event the gas contracts pertaining
19 to these various sites are assigned, to your
20 knowledge on behalf of the trustee, does the new --
21 does the entity have sources of funds to use to
22 perform its service independent of the loans from
23 Scattered or Chiplease?

24 A Yes.

25 Q What would those be?

1 A Its greenhouse gas credits and its electric
2 revenue.

3 Q The electric revenue from these sites?

4 A Yes.

5 Q Now, it's my understanding that the
6 renewable energy credits from these sites are very
7 minimal; is that correct?

8 A I have no idea.

9 Q You've never investigated that?

10 A I don't recall.

11 Q Okay. Mr. Greenblatt, in the event that
12 these contracts are assigned, does Chiplase or do
13 you anticipate having any role in the operation of
14 the gas plants?

15 A No.

16 Q Does Chiplase or you have any interest in
17 making or advising on any operational decisions?

18 A No.

19 MR. JORDAN: Thank you. Pass the
20 witness.

21 CROSS-EXAMINATION

22 BY MR. BOHAN:

23 Q Mr. Greenblatt, did you testify on direct
24 examination that Chiplase's obligation to fund the
25 loan to IIT was limited by a 25 percent participation

1 in that loan?

2 A I said that it was 25 percent or such other
3 amount as we would agree to.

4 Q Well, there's been no agreement between
5 Chiplease and Scattered as to which of the two
6 companies will contribute which portion of the loan,
7 true?

8 A That's not my understanding.

9 Q Isn't that what you told me when I took
10 your deposition last week?

11 A That was last week and this is now.

12 Q Well, is there an agreement? Has Chiplease
13 entered into an agreement with Scattered in the last
14 seven days regarding the portion of the loan that
15 each of the two would contribute?

16 A Yes.

17 Q All right. And what's the agreement?

18 A Twenty-five percent or such other amount as
19 the two parties may agree.

20 Q Is that agreement between Chiplease and
21 Scattered memorialized in any document?

22 A I believe so.

23 Q Who negotiated it on behalf of Chiplease?

24 A I did.

25 Q Who negotiated it on behalf of Scattered?

1 A Mr. Jahelka.

2 Q When?

3 A In the last week.

4 Q You signed an agreement with Scattered by
5 which Chiplease is on the hook for no more than
6 25 percent of the loan unless otherwise agreed?

7 A I believe the agreement says that we would
8 do 25 percent or such other amount as we would agree
9 to.

10 MR. BOHAN: Your Honor, I have to move
11 to strike that testimony, because we've made requests
12 for those document, as you can imagine, from the
13 very -- you know, for the last several months. And
14 we have no -- we have never been provided any updated
15 agreement between Chiplease and Scattered regarding
16 the fundamental question who is going to fund this
17 trust. It seems --

18 THE COURT: Do you have a copy of this
19 document?

20 MR. JORDAN: I don't think there's a
21 document. I don't think he said there's a document,
22 and I haven't seen one, if there is.

23 THE WITNESS: There is a loan
24 agreement.

25 MR. JORDAN: Oh, it's in the loan --

1 I think Mr. Greenblatt is mistaken.

2 THE COURT: Well, I don't want to hear
3 your testimony on a subject like that, Mr. Jordan. I
4 simply asked if you had a document and the answer to
5 that question should have been no.

6 MR. JORDAN: It was no.

7 THE COURT: Without an elaboration
8 suggesting that the witness might want to change his
9 testimony.

10 MR. JORDAN: Your Honor -- sorry.

11 THE COURT: That's really very
12 problematic as far as I am concerned.

13 In any event, I am not going to strike
14 the testimony. You can ask another question.

15 MR. BOHAN: I will. Thank you, Your
16 Honor.

17 BY MR. BOHAN:

18 Q Does Chiplase prepare financial
19 statements?

20 A Yes.

21 Q Does Chiplase have a current balance
22 sheet?

23 A Reasonably current.

24 Q Does it have a current income statement?

25 A Yes.

1 Q How about a statement summarizing the
2 sources and uses of its cash?

3 A Yes.

4 Q How current are those financial statements?

5 A Either through mid -- the third quarter of
6 last year.

7 Q The third calendar quarter 2007?

8 A Yes.

9 Q All right. What is your relationship with
10 Rumblestiltskin Corporation?

11 A I am believe I'm the 50 percent
12 shareholder.

13 Q Who owns the other 50 percent?

14 A Mr. Jahelka, and I think Mr. Nichols'
15 family partnership.

16 Q Are you also a director of Rumblestiltskin?

17 A I may be. I don't recall.

18 Q Are you an officer of that company?

19 A I don't actually recall, but I might be.

20 Q Is it the sole owner of RTC?

21 A Yes.

22 Q When Chiplase negotiated its loan to RTC,
23 who negotiated on behalf of Chiplase?

24 A I would have.

25 Q Who negotiated on behalf of RTC?

1 A I have no recollection.

2 Q Well, what role, if any, did you play in
3 the approval by RTC of that loan agreement?

4 A Which loan agreement?

5 Q The one you testified to on direct
6 examination, the very first loan that Chiplease
7 entered into with RTC.

8 A I have no recollection.

9 Q Did you say Chiplease has current assets of
10 15 to \$16 million?

11 A Yes.

12 Q What do you mean by current assets?

13 A Assets that it has now.

14 Q Okay. So let me ask you the question: Are
15 you including then lease payments receivable as a
16 current asset?

17 A I am including all of the assets that it
18 currently has.

19 Q Does that include obligations to Chiplease
20 under its leases to dry cleaning companies?

21 A Yes.

22 Q All right. Well, what are Chiplease's
23 current liquid assets?

24 A About \$1.2 million.

25 Q And that's cash or marketable securities?

1 A Yes.

2 Q Chiplease has obligated itself in this
3 bankruptcy proceeding, has it not, to pay the
4 operating -- the Chapter 7 operating expenses of the
5 debtor beyond \$150,000, correct?

6 A Yes.

7 Q And how much has Chiplease paid pursuant to
8 that obligation?

9 A I have no idea.

10 Q That's an ongoing obligation of Chiplease,
11 correct?

12 A To the extent there are operating expenses,
13 yes.

14 Q And is it reflected -- is that obligation
15 reflected as a liability on Chiplease's balance
16 sheet?

17 A No, because we don't believe there is any
18 further operating expenses of something that's
19 disposed of all its assets.

20 Q So there is no -- so Chiplease has no
21 reserve or created no allowance for the payment of
22 Chapter 7 operating expenses beyond the \$150,000 that
23 were the responsibility of the trustee or debtor?

24 A Chiplease has not reserved anything for any
25 further expenses because it doesn't believe there are

1 any.

2 Q While you were the trustee of the trust,
3 did the trust own any tax credits?

4 A No.

5 Q To your knowledge, has the trust ever
6 offered to compensate vendors of services or goods
7 using tax credits?

8 A The trust, no.

9 Q You have no knowledge about the trust ever
10 owning tax credits that it could use in the conduct
11 of its business?

12 A That's what I just said, yes.

13 Q Chiplease occupies space at 330 South
14 Wells, true?

15 A Yes.

16 Q It occupies space that's leased by Banco
17 Panamericana, correct?

18 A No.

19 Q All right. Whose space is it in?

20 A It's in its own space.

21 Q Does it pay rent for that space?

22 A Yes.

23 Q To whom?

24 A To 200 West Partners (sic).

25 Q Isn't it true, sir, that Chiplease is a

1 subtenant of Banco Panamericana?

2 A No.

3 Q All right. Mr. Greenblatt --

4 MR. JORDAN: Objection. I think
5 that --

6 THE COURT: There's no question
7 pending.

8 BY MR. BOHAN:

9 Q Mr. Greenblatt, did you sit for your
10 deposition in this case as a 30(b)(6) representative
11 of Chiplease, Inc., on January 28th of this year?

12 A Yes.

13 Q And at your deposition, were you sworn to
14 tell the truth on behalf of Chiplease?

15 A Yes.

16 Q And at your deposition, sir, did I put
17 these questions to you and did you give me these
18 answers, page 26, line 15:

19 (As read)

20 "Question: Where is its, Chiplease's,
21 place of business?

22 "Answer: I beg your pardon?

23 "Question: Where does it conduct its
24 business?

25 "Answer: 330 South Wells.

1 "Question: Does it own its space
2 there?

3 "Answer: No.

4 "Question: From whom does it lease?

5 "Answer: I believe it has a sublease
6 from Banco Panamericana. And I would say that it has
7 a sublease. It occupies a space of Banco
8 Panamericana."

9 MR. JORDAN: Your Honor --

10 BY MR. BOHAN:

11 Q Did you give those answers in response to
12 my questions?

13 MR. JORDAN: Your Honor, we object.
14 In order to impeach, he has to impeach on a material
15 fact. And whether they lease from a building owner
16 or Banco Panamericano is not material to anything.

17 THE COURT: Overruled.

18 THE WITNESS: The space that we may
19 sublease from Banco Panamericana is not in Banco
20 Panamericana's space. It is a different floor.

21 BY MR. BOHAN:

22 Q Did you not tell me, sir, under oath just
23 two weeks ago Chiplease occupies to use your words,
24 "space of Banco Panamericano?"

25 A That's correct, but it's not the space that

1 Banco Panamericana is currently in. It's the space
2 that Banco Panamericana used to be in.

3 Q Now, did you say that Chiplease rents its
4 space at that location?

5 A Yes.

6 Q Did you not tell me this just two weeks
7 ago:

8 (As read)

9 "Question: Does it pay rent for that
10 space; namely, Chiplease?

11 "Answer: No."

12 A That's true that I said that, yes.

13 Q Okay. So tell us what the truth is.
14 Chiplease either does rent space and pay money for
15 that space at 330 South Wells or it doesn't, but
16 which of the two is it?

17 A Well, it -- it does rent space and it does
18 not pay rent on the space currently because it is
19 owed money by the lessor, and the credits it's loaned
20 from the lessor for the space.

21 Q Could you read the last portion of the
22 answer for me, please.

23 (Record read.)

24 BY MR. BOHAN:

25 Q Which credits are those?

1 A Credits on the loan.

2 Q Does Chiplase loan own any assets other
3 than loans and leases?

4 A Yes.

5 Q But those assets it's written off, has it
6 not?

7 A No.

8 Q Mr. Greenblatt, at your deposition
9 January 28th, did I ask this question and did you
10 give me this answer under oath:

11 (As read)

12 "Question: Does Chiplase own any
13 assets other than its loans and leases?

14 "Answer: It may. But if it has, it
15 doesn't. It has written them off."

16 A That was true on January 28th, but since
17 then we have purchased shares of stock.

18 Q Pardon me?

19 A Since then we have purchased shares of
20 stock.

21 Q In what corporation?

22 A Home Financial Bank Corp.

23 Q And what's its ownership interest in that
24 company?

25 A 9,216 shares.

1 Q And what's the market value?

2 A \$40,000.

3 Q As of what date did Chiplease have cash or
4 cash equivalents in the amount of \$1.2 million?

5 A Right now.

6 Q The family trust that owns Chiplease owns
7 all of Banco Panamericana, correct?

8 MR. JORDAN: Objection. Relevance,
9 Your Honor. Banco Panamericana is not a lender here.

10 THE COURT: It's overruled.

11 THE WITNESS: What's your question?

12 BY MR. BOHAN:

13 Q The entity or entities that own Chiplease,
14 own all of the shares of Chiplease, also own all the
15 outstanding shares of Banco Panamericana?

16 A Yes.

17 Q What is your salary at Chiplease?

18 A It varies, but I generally get about
19 \$10,000 a month.

20 Q Is your salary Chiplease's only expense?

21 A Probably not, but it is the major portion
22 of it.

23 Q Now, as of January 28th, Chiplease had on
24 hand approximately a hundred thousand dollars in
25 cash, correct?

1 A That's correct.

2 Q All right. And so between January 28th and
3 today's date, where did Chiplease come up with the
4 \$1.1 million that it now has on hand in cash or cash
5 equivalents?

6 A It received a principal payment from the
7 purchasers of Sugar Island Partners.

8 Q Sugar Island Partners?

9 A Uh-huh. Yes.

10 Q What's the nature of that business?

11 A It's real estate.

12 Q Do you have an ownership -- do you have an
13 ownership in Sugar Island Partners independent of
14 Chiplease's?

15 A No. They are the debtor.

16 Q What role did you play in having Chiplease
17 become a beneficiary of the trust?

18 A I had Chiplease become the beneficiary of
19 the trust.

20 Q Pardon me?

21 A I was the principal agent.

22 Q Was it your idea?

23 A I don't recall.

24 Q At the time Chiplease became a beneficiary
25 of the trust, you were just resigning as trustee of

1 the trust, correct?

2 A Yes.

3 Q And whose idea was it that you would resign

4 and Mr. Connolly would be appointed the new trustee?

5 A I have no idea. I don't recall.

6 Q Did you say Sugar Island is in bankruptcy?

7 A No.

8 Q Oh, I'm sorry. I misunderstood you.

9 Is it a creditor of a bankrupt?

10 A I have no idea.

11 THE COURT: Is Sugar Island unrelated

12 to you?

13 THE WITNESS: Yes. Sugar Island is

14 just the debtor, not in the bankruptcy sense, in the

15 general sense.

16 BY MR. BOHAN:

17 Q A debtor to Chiplease?

18 A Yes.

19 Q Does it still have a debt to Chiplease or

20 has that been extinguished now by the payment of the

21 money that you talked about earlier?

22 A It still has a debt.

23 Q What's the amount of that debt?

24 A I don't recall exactly. The aggregate

25 amount is -- was 25 million to start. I think it is

1 18 million now. We own 30 percent of the debt.

2 Q Who owns the other 70 percent?

3 A I have no idea.

4 Q Is Chiplase currently funding the
5 operations of the RTC?

6 A No.

7 Q Well, who is paying Mr. Connolly's salary?

8 A I think Resource Technology of South
9 Dakota.

10 Q And who is funding -- to your knowledge,
11 who is funding the operations of RTC?

12 A I don't know the exact details.

13 MR. APOSTOLIDES: Judge, I just want
14 to object to the extent there is a question about
15 which RTC is Mr. --

16 MR. BOHAN: I'll try to be as precise
17 as I can. Unless I am mistaken -- well, never mind.
18 BY MR. BOHAN:

19 Q To your knowledge, Chiplase today is not
20 funding the operations of the nondebtor RTC of which
21 Mr. Connolly is an employee; is that true?

22 A Chiplase -- you're asking me if Chiplase
23 is funding Resource Technology of Delaware; is that
24 the one you're asking me? Is that what you're asking
25 me?

1 Q The nondebtor RTC.

2 A Chiplease is not funding the nondebtor RTC
3 of Delaware.

4 Q To your knowledge who is?

5 A I don't believe that it has any operations.

6 Q Well, isn't it true, sir, that RTC's
7 employees are -- Connolly and the rest of the
8 employees are being paid by RTC notwithstanding that
9 they are purporting to represent -- rendering
10 services for IIT?

11 MR. APOSTOLIDES: Same objection.

12 THE WITNESS: They are not being paid
13 by RTC, the corporation which was a Chapter 11 and
14 Chapter 7 debtor. They are employed by a separate
15 corporation, which is not a debtor.

16 THE COURT: What's the name of that
17 corporation?

18 THE WITNESS: I believe it's Resource
19 Technology of South Dakota.

20 BY MR. BOHAN:

21 Q All right. Well, who is funding the
22 operation of that entity?

23 A Resource Technology of South Dakota. I
24 have no idea.

25 Q What's your relationship with that company?

1 A I don't know.

2 Q Is it owned by Rumpelstiltskin?

3 A I have no idea.

4 Q Are you an officer or director?

5 A I don't believe so, but I couldn't tell
6 you.

7 Q Do you own any equity in it?

8 A I don't believe so.

9 Q Directly or indirectly?

10 A If I owned it through Rumpelstiltskin, then
11 I would own it directly -- indirectly, but I have no
12 idea.

13 Q Whose idea was it for Chiplease and
14 Scattered to designate as the proposed assignee of
15 the Sangamon, Litchfield and Bloomington gas
16 contracts the Illinois Investment Trust?

17 A I don't actually recall.

18 Q Were you -- did you have any
19 decision-making role?

20 A I may have. I have no recollection.

21 Q What was the purpose of that?

22 A Since I don't remember doing it, I don't
23 remember any purpose if I did it.

24 Q What, if any, consideration flowed to
25 Scattered and Chiplease from Illinois Investment

1 Trust at the time Illinois Investment Trust was
2 designated by those two companies to be the assignee
3 of these gas contracts?

4 A What?

5 Q What, if anything, of value, what benefit
6 flowed to Chiplease or Scattered as a result of their
7 decision to designate Illinois Investment Trust as
8 the proposed assignee of the gas contracts that are
9 at issue in this trial?

10 A Well, I don't exactly understand what
11 you're asking, but to the extent that we were
12 settlors, we became beneficiaries.

13 Q To your knowledge is Chiplease under any
14 legal obligation that would prevent it from
15 de-designating Illinois Investment Trust as the
16 proposed assignee of the contract?

17 A What?

18 Q Did you not hear or did you not understand?

19 A I didn't understand what you're asking me.

20 Q Okay. You're the president of Chiplease?

21 A That's correct.

22 Q Are you aware of any -- are you aware of
23 any legal impediment to Chiplease deciding to
24 de-designate Illinois Investment Trust as its
25 designee for these contracts and instead designate

1 someone else or itself?

2 A I don't know.

3 Q You have no idea?

4 A I don't know. I'm not an attorney. I have
5 no idea.

6 Q Who negotiated the loan among Chiplease,
7 Scattered and IIT on behalf of Chiplease?

8 A I did.

9 Q And who negotiated on behalf of Scattered?

10 A Mr. Jahelka.

11 Q Who negotiated on behalf of the trust?

12 A Mr. Connolly.

13 Q And you and Mr. Jahelka could remove Mr.
14 Connolly as trustee of that trust at any time,
15 correct?

16 A I don't know.

17 Q Chiplease -- I'm sorry.

18 If it turn outs that Illinois
19 Investment Trust is incapable of performing these
20 contracts, even with the \$3 million that Chiplease
21 and Scattered say they have committed to fund its
22 operation, then what will happen to the contracts?

23 A I don't know. That depends on the
24 circumstances.

25 Q Well, do you have a contingency plan?

1 A My contingency plan is to fund further if
2 it is worthwhile and not to fund further if it's not
3 worthwhile.

4 Q But do you have any alternative operators
5 or managers of the contracts, persons other than Mr.
6 Connolly or other former employees of Resource
7 Technology?

8 A I have no contingencies that the lender has
9 planned for, no.

10 Q Now, you were asked questions about Mr.
11 Connolly's performance and the performance of RTC
12 from the vantage point of a lender, Chiplase acting
13 as lender; do you recall that?

14 A Yes.

15 Q Insofar as RTC was obligated to perform gas
16 contracts where the counter-parties where the
17 landfill owners, do you have any assessment of
18 whether or not Mr. Connolly and RTC did a good job of
19 that or not?

20 A My assessment is that the landfill owners
21 set out to exercise their rights in a zero sum game
22 to take all of the rights that RTC had back under any
23 circumstance.

24 Q Do you have any knowledge as a lender to
25 RTC or as someone who has an opinion regarding Mr.

1 Connolly regarding any of the circumstances that gave
2 rise to defaults by RTC under its gas contracts with
3 the landfill owners?

4 MR. JORDAN: Objection. Foundation.

5 THE COURT: Overruled.

6 THE WITNESS: Well, I'm not aware of
7 the defaults that RTC might have with the landfill
8 owners. I'm aware of several things that the
9 landfill owners did themselves to cause their own
10 problems.

11 For example, in the collection system
12 in Peoria, the landfill owners refused to sign the
13 land permit to put in the -- the jumper system to
14 alleviate the gas migration problem. In Springfield,
15 the landowners didn't put on a proper cap and ripped
16 the cap out and caused all sorts of gas migration
17 problems.

18 In Congress, the landfill owners
19 consistently operated the landfill after their
20 purported closing date and only put in enough so that
21 they could continually fill in to settle. And in
22 such a case, no landfill system will take gas out of
23 the -- or smell out of the new refuse because it
24 wasn't there when it was designed and approved.

25 BY MR. BOHAN:

1 Q And what, if any, investigations, sir, have
2 you done regarding problems at the Congress Landfill?

3 A I receive reports from the various parties
4 and I understand the amount of waste that has gone
5 into the Congress Landfill since the collection
6 system was installed.

7 Q So from your vantage point then, and you
8 tell me if I'm wrong, but from your vantage point,
9 RTC showed itself perfectly capable of performing
10 those landfill gas contracts; is that true?

11 A I believe that that is a mischaracter -- I
12 never used the word perfectly, but it is capable of
13 performing when it is not interfered with.

14 Q And are all of the defaults that RTC has
15 been found guilty of with respect to its performance
16 under landfill gas contracts, are those all the
17 faults of the -- the fault of the landfill owners?

18 A I'm not aware of all the defaults that
19 you're talking about.

20 Q Do you have any opinion of Mr. Connolly's
21 ability to discharge the obligations of RTC under
22 these landfill gas contracts in a way that's
23 consistent with the requirements of the Illinois
24 Environmental Protection Agency?

25 A I believe that he is capable of doing that,

1 yes, because he has been.

2 Q And are you aware of all of the notices of
3 violation that have been issued to RTC and/or the
4 landfill owners as a result of RTC's failure to keep
5 itself in compliance with applicable environmental
6 regulations?

7 A Well, I would say that your statement that
8 it's a result of RTC's failure, it's not a result of
9 RTC's failure. It's a result of the failure of the
10 landfill owners.

11 Q All right.

12 A And, in fact, it would be the landfill
13 owners that we dealt with have tens if not hundreds
14 of thousands of notices of violations for their sites
15 in Illinois that are completely unrelated to RTC.

16 Q Then let me put it to you this way: Are
17 you aware of any notice of violation that was
18 actually issued by IEPA to RTC that was the fault of
19 RTC as opposed to a landfill owner?

20 A Yes.

21 Q And what notices of violation are those?

22 A There was a notice of violation to fail an
23 emissions test. On the other hand, there's a total
24 difference between a notice of a violation and a
25 finding that RTC has been -- violated regulations or

1 the law, which it's never been found to have done,
2 unlike your clients.

3 MR. BOHAN: Your Honor, I move to
4 strike the nonresponsive portion of his answer.

5 THE COURT: There is really little
6 point in moving to strike since there is no jury
7 here.

8 MR. BOHAN: Understood.

9 BY MR. BOHAN:

10 Q You were asked about your impression or
11 your opinions of Mr. Szilyagi's service as Chapter 11
12 trustee in this case, right?

13 A I don't believe I'd use the word service,
14 but yes.

15 Q Okay. And, similarly, you were asked about
16 I guess your impressions of Mr. Steinberg, who has
17 served as Chapter 7 trustee, right?

18 A Yes.

19 Q And I believe you testified that you had no
20 problems with Mr. Steinberg or no problems with the
21 way he conducted himself as the Chapter 7 trustee?

22 A That's correct.

23 Q Okay. So then you had no problems with the
24 lawsuit that Mr. Steinberg initiated against you
25 personally, Mr. Greenblatt, as well as your

1 affiliates for, among other things, misappropriating
2 assets of the estate?

3 A Well, that's a claim that he tried to make
4 and decided not to pursue. And as a matter of fact,
5 it's the same complaint that Mr. Szilyagi filed after
6 he found -- he accused me of taking assets from the
7 estate that were in the account that he had control
8 of. So for the fact that the trustee filed, refiled
9 a complaint under which Mr. Szilyagi filed a
10 knowingly false pleading, you know, that's business.

11 BY MR. JORDAN:

12 Q And you have no problem with that?

13 A I have been sued many times and I have been
14 a plaintiff many times. I don't care.

15 MR. BOHAN: May I have a minute, Your
16 Honor?

17 THE COURT: Yes.

18 MR. BOHAN: I have nothing further,
19 Your Honor.

20 MS. KUJACA: I have no questions, Your
21 Honor.

22 REDIRECT EXAMINATION

23 BY MR. JORDAN:

24 Q Mr. Greenblatt, Sugar Island, whatever you
25 referred to them as, when you say they're a debtor do

1 you mean they're a borrower?

2 A Yes.

3 Q Now, can we look at Exhibit 50, IIT Exhibit
4 50.

5 THE COURT: Yes.

6 MR. JORDAN: I apologize for
7 interjecting before, Your Honor.

8 Your Honor, I have a paper copy.

9 THE COURT: That's what you're going
10 to have to do, unfortunately. This is -- this is
11 just infuriating. There is no reason for this not to
12 work.

13 MR. JORDAN: May I approach, Your
14 Honor?

15 THE COURT: Yes, go ahead.

16 MR. JORDAN: I provided this to your
17 clerk and a copy to the witness. God willing, this
18 will be my only exhibit.

19 THE COURT: All right.

20 BY MR. JORDAN:

21 Q Now, Mr. Greenblatt, I have laid in front
22 of you exhibit Illinois Investment Trust No. 50. And
23 what I would like you to do, you had referenced a
24 75 percent number before.

25 Can you take a look at the payment

1 terms paragraph on the first page. Let me know when
2 you find it.

3 A Yes.

4 Q Okay. Is that the 75 percent to which you
5 referred earlier?

6 A Yes.

7 Q Okay. You're apparently quite aware of the
8 various compliance issues in the case. How did you
9 become aware of those issues?

10 A They were referred to me by John Connolly
11 and other parties in the bankruptcy.

12 Q What was the reason for their referring
13 those matters to you?

14 A I was the senior secured creditor.

15 Q Okay. And despite your knowledge of all
16 these compliance issues, is Chiplase and is
17 Scattered still willing to lend to the new entity
18 that we're going to set up to accept the assignment?

19 A Yes.

20 THE COURT: Okay. I'm still looking
21 at this amended promissory note. You asked Mr.
22 Greenblatt if his understanding of Chiplase's
23 payment obligation came from paragraph three?

24 MR. JORDAN: Right. It is -- I don't
25 want to testify, but Mr. Greenblatt were you --

1 THE COURT: Well, wait a second, no,
2 no, don't testify. I just want to make sure that was
3 your question.

4 MR. JORDAN: Yeah.

5 THE COURT: Mr. Greenblatt, this
6 provision has to do with the amount that Illinois
7 Investment Trust has to pay to the payees of the
8 note?

9 THE WITNESS: That's right.

10 THE COURT: And you say that this is
11 what you had in mind when you said that Chiplease had
12 an obligation to pay 25 percent of the obligations
13 under a loan agreement to Illinois Investment Trust?

14 THE WITNESS: No.

15 THE COURT: Well, that's what
16 Mr. Jordan thought he was asking you.

17 MR. JORDAN: That's what I thought I
18 was asking you.

19 THE COURT: So why don't you clarify
20 that.

21 BY MR. JORDAN:

22 Q Is there any document anywhere that -- or
23 any agreement anywhere that says that Chiplease is
24 going to provide 25 percent and Scattered is going to
25 provide 75 percent?

1 A I thought that there was, but apparently it
2 is 25, 75 for a different term.

3 THE COURT: Now, wait a second. Did
4 you have negotiations with Mr. Jahelka in the last
5 week determining what part of the obligations on the
6 loan agreement to Illinois Investment Trust would be
7 paid by Scattered and what would be paid by
8 Chiplease?

9 THE WITNESS: Yes, but it's always
10 been 75/25.

11 THE COURT: Okay. In the last week
12 you had negotiations with Mr. Jahelka regarding that
13 question. Were your negotiations memorialized in any
14 document?

15 THE WITNESS: I believe that they were
16 memorialized in this document.

17 THE COURT: This is a promissory note
18 defining the obligation of Illinois Investment Trust
19 to pay money to Chiplease and Scattered. It does not
20 define in any way the obligation of Scattered or
21 Chiplease to pay money to Illinois Investment Trust;
22 do you understand that?

23 THE WITNESS: I understand that
24 exactly. What I was trying to say is that it was my
25 belief that the -- the pay -- the recipients of the

1 payments were defined in this note to be 75/25.

2 Apparently I am mistaken.

3 THE COURT: Go ahead.

4 BY MR. JORDAN:

5 Q So, in fact, there's no written agreement;
6 is that correct, just --

7 A I thought that there was. I think --

8 Q Is there a written agreement --

9 A I still believe that there is, but
10 apparently I can't see that there is any.

11 MR. JORDAN: Okay. That's fine. We
12 have no further questions, Your Honor.

13 THE COURT: You may step down, Mr.
14 Greenblatt.

15 (Witness excused.)

16 THE COURT: Your next witness,
17 Mr. Jordan.

18 MR. JORDAN: I guess if possible we
19 would like to recall Mr. Connolly just to clarify the
20 issue with regard to his willingness to set up a new
21 corporation.

22 MR. O'MEARA: Your Honor, we would
23 object. We don't see any reason for Mr. Connolly's
24 testimony.

25 THE COURT: No. That would not be

1 appropriate. You called him in your case in chief
2 and finished with him. If there is a need to call
3 him in rebuttal, you can do that.

4 MR. JORDAN: Okay.

5 THE COURT: Do you have any other
6 witnesses?

7 MR. JORDAN: No, Your Honor.

8 THE COURT: Okay.

9 MS. KUJACA: Your Honor, at this time
10 I would like to move for a motion, a motion for a
11 directed verdict.

12 THE COURT: No, I will hear whatever
13 evidence you have to present.

14 MS. KUJACA: Thank you.

15 Then I call Pat Sloan.

16 (Witness sworn.)

17 THE COURT: You've determined that you
18 want to go before Mr. Bohan.

19 MS. KUJACA: Yes.

20 THE COURT: Okay.

21 PATRICK SLOAN, WITNESS, SWORN

22 DIRECT EXAMINATION

23 BY MS. KUJACA:

24 Q Mr. Sloan, would you state your name and
25 spell your last name for record, please.

1 A Patrick Sloan, S-l-o-a-n.

2 Q Where are you currently employed?

3 A Foth infrastructure & Environmental, LLC.

4 Q And if we could briefly go through your
5 educational background. Do you have a college
6 degree?

7 A Yes, I do.

8 Q From where?

9 A I have a bachelor of science degree in
10 civil engineering from the University of Illinois,
11 and a master's degree in agricultural engineering
12 from the University of Kentucky.

13 Q Have you done any post-graduate work?

14 A Yes, I have.

15 Q What post-graduate work have you done?

16 A Well, I'm sorry. Not post -- not
17 post-graduate but training as a course of engineering
18 business.

19 Q Do you have any certifications?

20 A I have a professional engineering license
21 in the state of Illinois.

22 Q And do you have any continuing education
23 requirements that you're required to fulfill?

24 A Yes. Illinois requires 30 professional
25 development hours every two years.

1 Q Do you do any of those continuing education
2 requirements regarding landfills?

3 A Yes, I do.

4 Q How many have you done in the last say five
5 years?

6 A Probably two to four per year, different
7 programs.

8 Q When did you first become involved with the
9 Peoria landfill?

10 A Probably shortly after 1986 when I became
11 employed by Dailey & Associates Engineers.

12 Q Dailey & Associates later merged with Foth
13 where you work now, correct?

14 A Correct. On September 15th, 2005 Dailey
15 merged with Foth.

16 Q Was Foth ever employed RTC?

17 A As Dailey & Associates we were when they
18 became the contractor for Peoria Landfill.

19 Q What Foth's -- excuse me, Dailey's duties
20 at that time?

21 A We assisted them in obtaining the
22 construction permit from the Division of Air,
23 Illinois Environmental Protection Agency. I believe
24 we also helped prepare the Bureau of Land permit
25 application for the same improvements. And then

1 later we provided construction quality assurance for
2 the improvements in the gas collection system.

3 Q And that's what's commonly referred to as a
4 CQA?

5 A Yes. CQA is construction quality
6 assurance. It's a requirement of 811 of Title 35.
7 Its purpose is to verify that all improvements have
8 been installed as designed.

9 Q When did Dailey's employment with RTC end?

10 A Well, at the conclusion of the submittal of
11 the CQA document, which is a permit application, to
12 the agency, I don't believe we did any work for them
13 after that point.

14 Q Would you say that was around 1999 or so?

15 A That sounds about right.

16 Q Okay. When did -- excuse me. Strike that.

17 What is your current position in
18 regards to the Peoria Landfill?

19 A I am project manager for the City of
20 Peoria, County of Peoria. We have an
21 intergovernmental agreement, and they own the
22 landfill basically 50/50. That agreement dates back
23 to 1975. And Dailey and/or Foth has provided
24 engineering since the inception of that agreement.

25 Q How long have you personally been the

1 project manager for the Peoria Landfill?

2 A Probably on the order of 15 years.

3 Q What are your current job requirements

4 regarding the Peoria Landfill?

5 A We have basically an annual agreement with
6 the city and county with -- the official name is the
7 joint city of Peoria County, Peoria Solid Waste
8 Disposal Facility Board. And under that annual
9 agreement, we provide engineering services at their
10 request.

11 For landfill number 1, the closed
12 landfill, which RTC is operating on, we are mostly
13 dealing with post-closure care. And they have
14 landfill number 1, which is operated by Waste
15 Management, which is active. And we review all their
16 documents, all permit applications and verify that
17 those are appropriate for the committee or the board.

18 Q And just to clarify for the court, the only
19 landfill that we are talking about in regards to RTC
20 is landfill number 1; is that correct?

21 A Correct. The lease or the gas rights
22 issued to RTC only deal with landfill number 1.

23 Q Thank you.

24 Do you communicate with RTC?

25 A Yes, on occasion. More earlier than later.

1 Q Who do you talk to at RTC?

2 A John Connolly, Rob Fortelka. And I have
3 had conversations with Vince Muir when he was alive.

4 Q Have you had any communications with Harry
5 Henderson?

6 A No.

7 Q Do you know who he is?

8 A Yes. And I just want to clarify, I do
9 receive communications in writing that are signed by
10 Harry Henderson. I have never met him.

11 Q And what is your understanding as to his
12 role in regards to the Peoria Landfill?

13 A I believe that the correspondence is -- the
14 letterhead says receiver for Peoria collateral
15 possibly.

16 Q Okay. What is currently on the Peoria
17 Landfill Number 1? What does the site consist of?

18 A Peoria Landfill Number 1 is approximately a
19 hundred acre landfill. It operated from 1975 until
20 1998. Operation at the beginning was conducted by
21 the City of Peoria, then the County of Peoria, then
22 Brown & Ferris Industries, and then finally Peoria
23 Disposal Company, which finished out the landfill and
24 put the final cover on that.

25 And since that time, the Peoria

1 Disposal Company has no other obligations. Under the
2 Waste Management contract, which was entered into in,
3 I believe, 1996, they provide normal post-closure
4 maintenance to the landfill. And then, of course,
5 RTC, in 1995 I believe, the city and county entered
6 into a contract for them to provide gas collection
7 and disposal services.

8 Q What is currently on the site? How many
9 wells are there?

10 A There's approximately 140 gas collection
11 wells and then a -- the gas-to-electric facility I
12 believe -- it's been a while since I've been inside
13 the building, but there were five Caterpillar engines
14 in there.

15 Q How many are currently working?

16 A The last I checked, probably within the
17 last week, there is one engine working.

18 Q Okay. Do you have any responsibilities
19 regarding the permitting process with IEPA on
20 Peoria's behalf currently?

21 A Yes.

22 Q And what are those responsibilities?

23 A Well, we -- as the city/county's engineers,
24 we review all permit applications by all contractors,
25 whether they are from RTC, Waste Management, PVC,

1 whatever they may be. We do prepare some directly as
2 well.

3 For example -- well, I mentioned the
4 RTC contracts. We had prepared -- and when we worked
5 for contractors at that site, it's with the approval
6 of both -- primarily the city and county and the
7 contractor, to avoid any conflict of interest issues.

8 But the ones we prepared directly for
9 the city and county deal primarily with ground water
10 assessments. We normally have at least one under
11 review at any given time. I think there is one in
12 Springfield now concerning ground water assessment on
13 landfill number 1 that's under review.

14 Q Have you prepared what we have been calling
15 CAAPP permits?

16 A Yes.

17 Q For whom?

18 A For -- we have assisted with Peoria,
19 city/county landfill. We've also assisted -- or we
20 did prepare Knox County Landfill in Galesburg.

21 Q Okay. What other documentation have you
22 prepared in connection with these permits?

23 A In connection with those permits?

24 Q Yes.

25 A Well, there's significant monitoring and

1 record keeping and reporting requirements under a
2 CAAPP permit at least semi-annual; NSPS new source
3 performance standard; six month annual reports;
4 annual compliance certifications.

5 Q And you've been involved in preparing such
6 documents?

7 A Yes. And I was just going to clarify
8 something that may not be clear in the testimony
9 previously. There is actually two major regulatory
10 avenues, a land and an air CAAPP --

11 MR. SCHMIDT: Your Honor, I'm sorry to
12 interrupt. We would object. Ms. Kujaca made it
13 clear at the start of the trial that Mr. Sloan is a
14 fact witness. This is now in the nature of opinion
15 testimony.

16 THE COURT: No more than Mr.
17 Connolly's testimony. The objection is overruled.
18 To the extent that he has knowledge bearing on the
19 work that he has done for the City and County of
20 Peoria, he can testify to that.

21 MR. SCHMIDT: Thank you.

22 THE WITNESS: The Bureau of Land
23 issues permits for the landfill itself, but also the
24 gas collection system and disposal system. That
25 predated the CAAPP program. New source standards for

1 municipal solid waste land fills enacted by U.S. EPA
2 and CAAPP deals more specifically then with those
3 systems. But there is still dual regulatory
4 oversight, if you will, on those issues. So we deal
5 with both of those permit avenues.

6 MS. KUJACA: Your Honor, I would like
7 to show Peoria Exhibit No. 3. Is this still not
8 working?

9 THE COURT: No. I've tried everything
10 I can think of to get this to work. Actually, I was
11 going to break at noon for lunch anyway. So let's
12 break now. I have a conference call at 1:30 that I
13 expect to be brief. So let's resume at 1:45.

14 MS. KUJACA: Okay. Thank you.

15 (Lunch Recess.)

16 THE CLERK: Recalling Resource
17 Technology Corporation. Continued trial.

18 THE COURT: Okay. Mr. Sloan, if you
19 would resume the witness stand, we'll recommence your
20 direct examination.

21 We do have the --

22 MS. KUJACA: Excellent. Thank you.

23 THE COURT: -- exhibit display working
24 again.

25 You wanted your Exhibit 3 --

1 MS. KUJACA: Yes, Your Honor.

2 THE COURT: -- if I remember
3 correctly.

4 MS. KUJACA: Yes.

5 THE COURT: So let me do that. Okay.

6 DIRECT EXAMINATION (Resumed)

7 BY MS. KUJACA:

8 Q Mr. Sloan, I have in front of you what is
9 Peoria Exhibit No. 3. Are you familiar with this
10 document?

11 A Yes.

12 Q What is it?

13 MR. SCHMIDT: Excuse me, Your Honor.
14 We would just restate our objection, same objection
15 as we made yesterday with regard to this type of
16 document on the grounds of hearsay and relevance.

17 MS. KUJACA: These are --

18 THE COURT: And let me make the same
19 offer to you that I made to Mr. Jordan, which is to
20 say that you may have a standing objection to all
21 notices of violation or other communications from the
22 IEPA based on hearsay and relevance. And I am
23 overruling those objections on the ground that in my
24 opinion they do not go to the truth of the matter
25 asserted in them, but go to the overall question of

1 the ability of IIT to perform under these leases.

2 MR. SCHMIDT: Thank you, Your Honor.

3 MS. KUJACA: Additionally, Your Honor,
4 I would note that these are business records under
5 rule -- Federal Rule of Evidence 8038 of a
6 government --

7 THE COURT: Well, that would get them
8 over one --

9 MS. KUJACA: Hearsay.

10 THE COURT: Well, not for the truth of
11 the matter contained therein, but it doesn't matter.

12 MS. KUJACA: Okay.

13 THE COURT: I am overruling the
14 objection on the basis that I just stated.

15 MS. KUJACA: Thank you.

16 BY MS. KUJACA:

17 Q I believe I asked you if you were familiar
18 with this. What is this document?

19 A This document is the CAAPP permit for the
20 RTC engine plant at Peoria, Illinois.

21 Q Did you review this permit when it was
22 originally issued?

23 A Yes, I did.

24 Q And when was that?

25 A I believe 2002.

1 Q Are you sent copies of documents such as
2 these once they are submitted to the IEPA?

3 A The lease requires that we get copies of
4 all documents, permit documents, between any
5 contractors, including RTC and EPA. And that's why I
6 received a copy of this one.

7 Q So you review permits such as these at the
8 Peoria Landfill as a routine part of your duties,
9 correct?

10 A Yes, I do.

11 Q To your knowledge, are these permits
12 documents which are routinely recorded or filed in
13 the offices of the IEPA?

14 A Yes, they are.

15 Q What exactly is a CAAPP permit, a C-A-A-P-P
16 CAAPP permit?

17 A Well, the Clean Air Act regulates sources
18 or potential sources of air pollution. This one here
19 was issued because of the size of the engines. They
20 are considered a source under the Clean Air Act
21 Program requiring a permit as a major source.

22 Also, Peoria Landfill is required to
23 have a CAAPP permit because it is a landfill over a
24 certain size.

25 Q So RTC and Peoria have a separate CAAPP

1 permit; is that correct?

2 A There's two separate CAAPP permits. They
3 are cross-referenced in the permits because under the
4 act, the Clean Air Act has to be an umbrella or
5 issued to a contiguous source. And Peoria is the
6 contiguous source. And as such, the overall permit
7 is issued in Peoria's name, and it's referenced in
8 this document later on, page three or so.

9 Q Okay. And this specific permit that we're
10 looking at right now, Exhibit No. 3, this just deals
11 with the engine plant; is that correct?

12 A I believe so. If we can scroll down, I can
13 verify that. In item one, it's a preamble, if you
14 will. Back. There we go. Thank you.

15 Yes, it states that right there, that
16 the source utilizes gas from landfill number 1, which
17 has permitted under double A, double AD. I'll just
18 abbreviate. That's a separate permit. And this one
19 is only for the engines.

20 Q Okay. Thank you.

21 And as we discussed earlier, Peoria's
22 own permit for land covers both landfills 1 and 2,
23 correct?

24 A Correct. And their CAAPP -- they have a
25 land permit for landfill 1, and the CAAPP permit

1 covers both landfill number 1 and number 2.

2 Q Do you know when this permit was set to
3 expire?

4 A They typically have a five-year term. If
5 you go back to the first page, I think it will say
6 that it expires in 2007. I don't remember the exact
7 date, but it would tell us. Okay. Expiration date
8 July 2nd, 2007.

9 Q So what to your knowledge is the current
10 status of this CAAPP permit?

11 MR. SCHMIDT: Objection. Foundation.

12 THE COURT: That's overruled.

13 THE WITNESS: I believe that RTC
14 submitted a renewal application. I don't recall ever
15 receiving a copy of that.

16 BY MS. KUJACA:

17 Q And to your knowledge, what is the status
18 of that renewal?

19 A I believe it is still under review.

20 Q Okay. Were there problems with RTC's work
21 on the Peoria Landfill prior to the filing of its --
22 RTC's bankruptcy case?

23 A Yes, there was.

24 Q What problems were there?

25 A The primary problem of most concern was

1 compliance issues on operation of the gas collection
2 system. Secondary problems were more appearances,
3 for example, mowing and upkeep of the features that
4 they were required to upkeep.

5 Q Were there any repairs that didn't comply
6 with the CQA?

7 A Yes. The repairs that they did
8 periodically to certain features, drip, condensate,
9 drip legs, were not reconstructed in compliance with
10 CQA.

11 Q What problems arose during the bankruptcy
12 case after RTC's bankruptcy filing?

13 A Well, the compliance issues gradually
14 worsened a little, I guess. The gas collection
15 system basically continued to degrade.

16 Q Was there a fire at the site after RTC
17 filed for bankruptcy?

18 A Yes. I think it was in 2003 there was a
19 grass fire on the landfill number 1 final cover. It
20 damaged some of the vegetative system and it damaged
21 some of the RTC wells.

22 Q In broad terms, what are the current
23 problems with the Peoria site?

24 A Well, the gas collection, only about
25 one-third of 140 wells are currently operational.

1 And these items are -- there are compliance issues
2 that have risen to the attention of EPA, and they
3 have issued a violation notice on it. It doesn't
4 appear that they have sufficient engine capacity to
5 dispose of the gasses being generated by the
6 landfill.

7 Q Are there any other current problems with
8 the landfill?

9 A There is minor problems with, again,
10 mowing, waste collection, proper disposal of
11 contaminated soil.

12 Q And you mentioned earlier NOV's or VN's. Do
13 you receive copies of VN's issued by the IEPA
14 regarding the Peoria Landfill?

15 A Yes, I do.

16 Q Do you review these documents routinely as
17 a part of your duties for the Peoria Landfill?

18 A Yes, I do. That's one of our jobs as
19 environmental engineers, is to assist our clients in
20 maintaining compliance, and when there's a violation
21 notice, then coming up with a compliance commitment.

22 Q To your knowledge, are VN's routinely
23 recorded or filed in the IEPA offices?

24 A Yes, they are when they observe them and
25 decide to issue them.

1 Q Are you aware of any NOVs issued to RTC?

2 A I believe there have been some. I don't
3 know specifically if I've received copies of all of
4 them.

5 Q Okay. I would like to start looking at
6 some of these, Peoria Exhibit No. 4. I show you a
7 document from the Illinois Environmental Protection
8 Agency dated May 22nd, 2003. Are you familiar with
9 this document?

10 A Yes.

11 Q What is it?

12 A This is a violation notice issued to Peoria
13 concerning the final cover and gas wells being
14 inoperable. As I mentioned earlier, it was primarily
15 the result of grass fires.

16 Q To your knowledge, what is the status of
17 this?

18 A We assisted in negotiations with EPA in
19 writing the compliance commitment agreement and
20 worked with the two contractors on site, Waste
21 Management and RTC, to fix the gas wells that were
22 damaged. So it's basically resolved.

23 MS. KUJACA: If we could go to Peoria
24 Exhibit No. 5, Your Honor.

25 That's Allied's No. 5.

1 THE COURT: Oh, excuse me.

2 MS. KUJACA: Thank you.

3 BY MS. KUJACA:

4 Q I show you what is labeled as Peoria
5 Exhibit No. 5. Are you familiar with this document?

6 A If you can just scroll down real quick to
7 verify. To the best of my recollection, the first
8 time I saw this was over lunch when we were looking
9 at the exhibits.

10 Q Were you supposed to receive a copy of this
11 VN once it was issued?

12 A As I mentioned, we should get copies,
13 Peoria should get copies of all correspondence
14 between RTC and the regulatory agency.

15 Q But to your knowledge, you never received a
16 copy?

17 A I don't recall ever seeing this.

18 MS. KUJACA: If we could move to
19 Peoria Exhibit No. 7, Your Honor. Thank you.

20 BY MS. KUJACA:

21 Q In front you is a letter dated May 4, 2005,
22 from the Illinois Environmental Protection Agency to
23 John Connolly at RTC. Are you familiar with this
24 document?

25 A I think I have the same answer as the

1 previous one, that the first time I saw it was a half
2 hour to an hour ago.

3 Q So this is a document that should have been
4 sent to you, but you did not receive a copy to the
5 best of your knowledge?

6 A Correct.

7 MS. KUJACA: If we could move to
8 Peoria Exhibit No. 11, Your Honor.

9 BY MS. KUJACA:

10 Q Are you familiar with this document?

11 A Yes.

12 Q What is this?

13 A This was a violation notice issued by the
14 agency to Peoria in 2005.

15 Q And you received a copy of this?

16 A Yes, I did.

17 Q What are the violations in this notice?

18 A If we can -- there we go. That page.

19 There is four violations. The first
20 one deals with the gas collection system, and the
21 fact that the collection system isn't working through
22 half to two-thirds of the landfill that --

23 MR. SCHMIDT: Objection, Your Honor.

24 It seems to me now they are trying to introduce the
25 substance of the document for the truth of the matter

1 asserted.

2 THE COURT: I don't think so. The
3 objection is overruled.

4 THE WITNESS: So this deals with --
5 CAAPP requires that GCCS collect landfill gas that's
6 generated by the landfill throughout. So item one is
7 just saying that they are not doing that, not able to
8 provide vacuum. Some of the monitoring reports that
9 we get also indicate that oxygen levels are not
10 appropriate. And that's also listed.

11 Item number two deals with control of
12 the non-methane organic concentrations, which
13 basically relates to the new source performance
14 standards. It's not being collected and disposed of
15 correctly.

16 Item three, John Connolly testified to
17 that yesterday, and said that they would install gas
18 metering devices now. And so that item could get
19 resolved if it was carried out.

20 And then item four is basically a
21 catch-all which the agency does on occasion that
22 catches all the miscellaneous items on the CAAPP
23 permit.

24 BY MS. KUJACA:

25 Q Now, correct me if I'm wrong, but this

1 violation notice was issued to Peoria for the gas
2 collection and control system because RTC's permit
3 just covered the engine plant; is that correct?

4 A Correct. The gas collection system is
5 covered by this permit issued to Peoria. In the
6 Peoria permit, it does cross reference the engine
7 plant. It also mentions that RTC has a contractor to
8 operate the gas collection system.

9 MS. KUJACA: Thank you.

10 If we could flip to Exhibit 13, Your
11 Honor.

12 BY MS. KUJACA:

13 Q I show you what's marked as Peoria Exhibit
14 No. 13, which is a letter from the Illinois
15 Environmental Protection Agency which is dated
16 January 13, 2006.

17 Have you ever seen this violation
18 notice?

19 A I don't recall ever seeing this document.

20 Q And, again, this is a document that should
21 have been delivered to you as an engineer for Peoria?

22 A Correct.

23 Q Do you know the status of this VN by any
24 chance?

25 A No, I do not.

1 MS. KUJACA: And if we could flip to
2 Exhibit 16, Your Honor.

3 BY MS. KUJACA:

4 Q I show you what's labeled as Peoria Exhibit
5 No. 16, which appears to be correspondence from Harry
6 Henderson to the Illinois IEPA issued August 2nd,
7 2006, that seems to indicate that there is another
8 violation notice issued to Harry Henderson.

9 Are you familiar with that?

10 A No, not that I recall.

11 Q Have you seen this document?

12 A Today was the first time that I have seen
13 it.

14 Q If there was in fact another NOV issued to
15 Harry Henderson, would that be something you should
16 have received a copy of?

17 A Yes.

18 Q Is the Peoria Landfill currently in
19 compliance with all IEPA regulations?

20 A No.

21 MS. KUJACA: If we could flip to
22 Exhibit 21, Your Honor.

23 BY MS. KUJACA:

24 Q I show you Peoria Exhibit No. 21. Are you
25 familiar with this document?

1 A I do not believe that I have seen -- I
2 don't recall seeing this document.

3 Q Does this document appear to be RTC's
4 renewal application for its CAAPP permit?

5 MR. SCHMIDT: Objection, Your Honor.
6 He just said he had never seen it before.

7 MS. KUJACA: But he can speak to what
8 it appears to be, Your Honor.

9 THE COURT: If he's an expert witness.

10 MS. KUJACA: Okay.

11 THE COURT: Objection sustained.

12 BY MS. KUJACA:

13 Q To the extent that RTC has submitted a
14 renewal application for its CAAPP permit to the IEPA,
15 did anyone at Peoria approve that application prior
16 to the submission?

17 A I don't recall that we've approved an
18 application.

19 Q Did you approve a renewal application on
20 behalf of Peoria prior to submission to the IEPA?

21 A No.

22 Q Do you know if it's a requirement of the
23 lease between RTC and that Peoria approve all IEPA
24 applications prior to submittal?

25 A Essentially I don't recall the exact

1 wording in the lease, but that is the intent.

2 Q Was the one operating engine at Peoria shut
3 down for several days last month?

4 A Yes, it was.

5 Q How did you know that?

6 A As part of our duties, we visit Peoria
7 Landfill on the average at least weekly. So one of
8 the people on my team that was there mentioned the
9 engines were not running.

10 Q How was that determined?

11 A You can tell that from the outside of the
12 building.

13 Q Was anyone from Peoria able to get into the
14 building to assess the problems?

15 A There was no one present when our people
16 were there.

17 Q Are you able get onto the site generally if
18 you need to?

19 A We are able to inspect the gas collection
20 system, but the building is locked, and we are not
21 able to get in there without prior arrangements.

22 Q And the building is what contains the
23 engines?

24 A The engines, correct.

25 Q Is it a violation of the IEPA regulations

1 for the engines to be unoperational for several days?

2 MR. SCHMIDT: Objection, Your Honor.

3 This is expert testimony. He's a fact witness.

4 THE COURT: That's overruled.

5 THE WITNESS: The CAAPP requires that
6 engines should be operating pretty much a hundred
7 percent of the time. If they are down for a certain
8 amount of the time, that recognized in the act. What
9 it does, is you need to make steps to correct the
10 problem. So if it's a one-time event, it is not
11 necessarily a compliance issue as long as they are
12 fixed and continue running.

13 BY MS. KUJACA:

14 Q Can the IEPA assess a monetary penalty?

15 A Yes. It's my understanding under the act
16 they can assess up to \$25,000 per day.

17 Q Is there a danger of fires on the site if
18 the gas isn't removed, collected or flared?

19 A The primary danger from fires at the
20 landfill or in the landfill would be when the gas
21 collection system is being operated incorrectly.

22 Q Do you know what was fixed at the site in
23 January to make it operational?

24 A No, not directly. Just I heard what Mr.
25 Connolly testified to yesterday.

1 Q You didn't know before that time?

2 A No, I did not.

3 Q Do you know who IIT is?

4 A Just in these legal dealings, and I guess
5 in talking about -- with counsel about the
6 stipulation.

7 Q Is it your understanding that many of the
8 RTC employees will be involved with IIT?

9 A Yes.

10 Q If IIT is able to assume the Peoria
11 Landfill lease, do you expect anything with
12 management to change?

13 A Well, based -- all I can base that on is
14 prior history pre-bankruptcy through bankruptcy. And
15 that experience is that steps were not taken to
16 maintain compliance.

17 Q Are you familiar with the stipulation
18 between Peoria and IIT?

19 A Yes.

20 Q Do you believe that the stipulation between
21 the parties will change anything regarding compliance
22 issues?

23 A Well --

24 MR. SCHMIDT: Objection. Relevance.

25 THE COURT: That's overruled.

1 THE WITNESS: The stipulation
2 basically backs up the lease that RTC is required to
3 operate the facility in compliance at all times.

4 BY MS. KUJACA:

5 Q Has RTC had an opportunity in the past to
6 bring the second, third, fourth engine on line?

7 A Yes, they have, and we have encouraged them
8 to bring sufficient capacity on site or repair the
9 engines that are there to dispose of gas correctly.

10 Q And how many engines total are there?

11 A The last time I was in the building there
12 was five engines there.

13 Q But only one is operational?

14 A That's my understanding.

15 Q John Connolly has testified that it will
16 cost 200 to \$250,000 to cure all the defaults at the
17 Peoria site. Do you agree with that assessment?

18 MR. SCHMIDT: Objection, Your Honor.
19 I have to object to this. He is a fact witness who
20 has not been identified as an expert, and this is
21 certainly expert testimony.

22 THE COURT: Was Mr. Connolly
23 identified as an expert witness?

24 MR. SCHMIDT: He was identified as an
25 expert witness certainly to Peoria.

1 MS. KUJACA: We never got an expert
2 report, Your Honor.

3 MR. SCHMIDT: An expert report is not
4 required under contested matters under Rule 9014.

5 MS. KUJACA: I wasn't aware that Mr.
6 Connolly was listed as an expert witness.

7 MR. SCHMIDT: It's in our
8 interrogatory responses.

9 THE COURT: I'm going to overrule the
10 objection. I don't see any real difference between
11 his testifying on this subject and Mr. Connolly's
12 testifying on this subject.

13 You can answer the question.

14 BY MS. KUJACA:

15 Q The question was whether you agree with the
16 testimony that it will cost between 200 and \$250,000
17 to cure the defaults at the Peoria site?

18 A No.

19 Q Why?

20 A Well, we've conducted cost estimates in
21 discussions with other contractors and vendors.

22 Q What do you believe it will cost to bring
23 the site into compliance?

24 MR. SCHMIDT: Objection, Your Honor.
25 Can I just have a continuing objection on the grounds

1 that this is opinion testimony, as to this line of
2 questioning?

3 THE COURT: You may have a continuing
4 objection, yes.

5 MR. SCHMIDT: Thank you.

6 BY MS. KUJACA:

7 Q You've prepared estimates regarding how
8 much it will cost to bring the site into compliance?

9 A Yes, we have.

10 Q And what are those estimates?

11 THE COURT: Let me ask this: Have you
12 supplied these estimates to counsel for --

13 MS. KUJACA: Yes, we have.

14 THE COURT: All right.

15 THE WITNESS: The estimates vary
16 because we do not have access to the gas collection
17 system to identify all the problems. The current
18 estimates to take care of the gas collection system
19 and the engine plant varies between \$840,000 and
20 \$1.8 million. Currently the budget is for half a
21 million dollars for this year.

22 BY MS. KUJACA:

23 Q Do you believe it is necessary to have a
24 flare on the premises?

25 A Yes, at this time, especially because

1 sufficient engine capacity isn't available.

2 Q What does that cost?

3 A We took -- Peoria took bids on this last
4 year, and I think the low bidder was approximately
5 \$200,000. It was between 150 and \$200,000.

6 Q Peoria has an IEPA permit to operate a
7 flare; is that correct?

8 A We have a permit to construct a flare;
9 that's correct.

10 Q Construct a flare.

11 There was some discussion and
12 testimony with John Connolly regarding the existing
13 branch system at Peoria, whether it needs to be
14 converted to a loop system. Did you agree with that?

15 A Well, it is a design approach, I guess. As
16 we currently see the system and understand it,
17 installations of a loop or additional pipes would be
18 the most effective way to achieve compliance
19 basically to collect gas from the entire 100-acre
20 fill.

21 Q And that's factored into the 840,000 and
22 \$1.8 million estimate?

23 A Yes. That's one of the items in that \$1.8
24 million estimate.

25 Q I would like to show you what's referred to

1 as IIT Exhibit 36, if I could.

2 MS. KUJACA: Thank you.

3 BY MS. KUJACA:

4 Q You've reviewed the various pro formas
5 prepared by IIT regarding the projected income to be
6 generated by the Peoria site?

7 A Yes, I have.

8 Q And we've seen a few of these, haven't we?
9 It's been modified a couple of times since you
10 originally saw it?

11 A Yes.

12 Q Do you agree with the assumptions?

13 A No, I do not.

14 Q Why?

15 MR. SCHMIDT: Your Honor, I object.
16 This testimony was disclosed. We did not receive any
17 documentation --

18 THE COURT: This is rebuttal. He's
19 simply responding to Mr. Connolly.

20 MR. SCHMIDT: Thank you.

21 BY MS. KUJACA:

22 Q Why not?

23 A First of all, in the revenue line, it
24 appears that it was assumed that it's based on two
25 engines operating at the rated capacity of 800

1 kilowatts per hour. And the purchase rate of 5.2
2 cents per kilowatt hour is an average for this year.
3 But it is unknown whether it would increase three
4 percent per year or not. It stayed at the prior rate
5 of 1.9 cents for a long time. And that's probably
6 controlled by the Illinois Commerce Commission.

7 Q You said earlier the engine capacity, am I
8 correct?

9 A Yes.

10 Q You said this assumption or this proforma
11 uses the assumption that the engine is operating at
12 what capacity?

13 A 800 kilowatt hours.

14 Q Is that what the Peoria engine is currently
15 performing at?

16 A No, it is not.

17 Q What is it performing at?

18 A The most recent -- in January the Ameren
19 metering records indicate that it is operating
20 between -- the one engine is operating between 500 to
21 600 kilowatt hours. That's basically what they are
22 putting on the grid and being paid for.

23 Q Do you agree with the projections?

24 A The other problem as far as assumptions on
25 the proforma would be on the expense side for the

1 landfill gas collection system O&M, which is the
2 middle. And I believe this -- these expenses are too
3 low, especially if the tree -- existing tree system
4 is maintained. There is many, many laterals, pipes,
5 drip legs that need to be made operational.

6 Q So revenue as listed in this proforma is
7 dependent on the GGCS being repaired and properly
8 operated?

9 A Precisely. You can't run the engines
10 unless you have gas delivered from the landfill.

11 Q Is the Peoria site capable of producing the
12 amount of gas projected by IIT?

13 A It could produce that amount of gas.
14 Probably the best estimate was done by Rust in 1995,
15 which indicates it should be producing 600 to
16 700 cubic feet per minute right now. But since there
17 is no meter at the site, we have no way to directly
18 measure it. We just estimate it based on the amount
19 of electrical -- electricity sold.

20 Q And is that number you just told me
21 different from what's estimated in this proforma?

22 A Well, yes, since, I mean -- their engine is
23 only -- current engine is only producing 500 to 600.
24 If they had two -- it's basically 75 percent of
25 revenue that they are projecting on this proforma.

1 MS. KUJACA: Okay. Your Honor, if we
2 could flip to Peoria Exhibit No. 33.

3 THE COURT: Which number?

4 MS. KUJACA: Peoria 33.

5 BY MS. KUJACA:

6 Q Mr. Sloan, are you familiar with this
7 document?

8 A Yes.

9 Q What is it?

10 A It is a memorandum that I issued to the --
11 to Peoria in January, providing them an update of the
12 status on the gas collection system on landfill
13 number 1.

14 Q And do you routinely provide such memoranda
15 as part of your duties for the Peoria Landfill?

16 A Yes, I do.

17 MS. KUJACA: If we could move to page
18 two, Your Honor.

19 BY MS. KUJACA:

20 Q You're familiar with this chart?

21 A Yes, I am.

22 Q Who prepared this chart?

23 A Well, I know it started with me. There may
24 have been some other people in my office working on
25 it. But basically I updated it and reissued it for

1 this memo.

2 Q What does this show?

3 A Well, as I had mentioned, there is no
4 metering and measuring of gas directly. But we can
5 measure the amount of electricity sold and landfill
6 gas -- well, the concentrations of methane is
7 measured, and we know what the performance is of the
8 engines. So we can back calculate basically the
9 amount of gas being produced and collected. The
10 upper, dark stair stepping line is the Rust gas
11 prediction made in 1995.

12 Q What is that?

13 A Rust is an engineering company. In 1995 we
14 wrote the RFP to secure a gas contractor. As part of
15 the RFP, Dailey & Associates hired Rust to generate
16 the gas curve, if you will, this prediction. And
17 that appears to be the best estimate that I've seen.
18 And then basically -- the square symbols and the
19 jagged line is the projection of RTC -- RTC
20 operations in Peoria.

21 Q So the Rust model predicts basically that
22 the gas flow from the Peoria Landfill will decrease
23 over time?

24 A Yes, it does. Landfill gas comes from
25 decomposition, and it's highest when the gas -- when

1 the waste is first generated and then it decreases
2 with time.

3 MS. KUJACA: If we could flip to the
4 next page.

5 BY MS. KUJACA:

6 Q And what is this document?

7 A This is Ameren's metering records from mid
8 December until, oh, mid January basically. Well, I
9 have that on the bottom, December 15th to
10 January 7th. At that time we weren't able to get a
11 hold of RTC. So indirectly we got these records for
12 operation. And as it indicates -- it indicates the
13 actual performance --

14 MR. SCHMIDT: Objection. This is a
15 hearsay document. He didn't prepare this document.

16 THE COURT: Well, how is this not
17 hearsay?

18 MS. KUJACA: That's fine, Your Honor.

19 THE COURT: The objection is
20 sustained.

21 MS. KUJACA: I have nothing further.

22 THE COURT: Mr. Bohan, did you have
23 any questions of this witness?

24 MR. BOHAN: Not at this time.

25 THE COURT: Go ahead.

CROSS-EXAMINATION

BY MR. SCHMIDT:

Q Now, you testified your company was employed by RTC prior to the bankruptcy case being filed, correct?

A That's correct.

Q Was Foth Infrastructure paid in full for that work?

A No, we were not.

Q How much was left unpaid?

A Well, there is probably some discrepancy, and this court has our claim, which might be in the 30 to \$40,000 range.

Q Do you believe the amount unpaid was greater than that?

A Well, a prior agreement in state court would have been higher.

Q Agreement between who?

A RTC and Dailey & Associates.

Q I see. And you have not received any payments from RTC since the bankruptcy case was filed, correct?

A Not to my knowledge, no.

Q What is your ownership interest in Fought?

A It's less than one percent.

1 Q Now, you mentioned a grass fire that
2 resulted in an NOV. The grass fire was not caused by
3 RTC, correct?

4 A No, it was not.

5 Q And the NOV issued from the Bureau of Land,
6 correct?

7 A Yes.

8 Q And isn't it true that the city/county is
9 responsible for final cover obligations for the
10 Bureau of Land?

11 A Primarily. There are some final cover
12 requirements for the gas collection system as well.

13 Q And after this fire the wells were
14 repaired, correct?

15 A Yes, they were.

16 Q You also mentioned drums of contaminated
17 soil. Now, isn't it true you have no personal
18 knowledge as to whether the materials in the drums on
19 the site is RTC's material?

20 A I don't have any personal knowledge, no, I
21 do not.

22 Q Now, isn't it true that RTC's performance
23 at the landfill regarding technical matters
24 deteriorated following the appointment of the Chapter
25 11 trustee in 2003?

1 A They have continued to contribute. What
2 was your word again?

3 THE COURT: Deteriorate.

4 THE WITNESS: Deteriorate. I don't
5 know. I have not thought with ascribing it to its
6 status in bankruptcy court.

7 THE COURT: It's a temporal question.
8 Has the performance declined during that period?

9 THE WITNESS: They have declined.

10 BY MR. SCHMIDT:

11 Q Now, there was discussion regarding the
12 stipulation.

13 MR. SCHMIDT: Your Honor, if we could
14 see Peoria Exhibit I believe it is 22.

15 BY MR. SCHMIDT:

16 Q If we could go to paragraph four. All
17 right. I would like to walk you through some
18 elements of this stipulation.

19 Now, paragraph 4(a) of the stipulation
20 calls for RTC to bring a second and a third engine on
21 line at Peoria, correct?

22 A I believe so.

23 Q And you have not estimated the cost to RTC
24 for bringing these engines on line, correct?

25 A No.

1 MS. KUJACA: Objection. That's not
2 what he testified.

3 THE COURT: No, that's an improper
4 objection. If the witness wants to say that that's
5 not his testimony, he's certainly free to do that,
6 but he shouldn't be encouraged by an objection.

7 MS. KUJACA: I apologize.

8 BY MR. SCHMIDT:

9 Q I'm sorry, your answer was you have not?

10 A No, I have not.

11 Q Okay. If we could go to paragraph 4(b).
12 Now, paragraph 4(b) calls for well field repairs to
13 be made by IIT. Now, isn't it true that at your
14 deposition on November 15th of 2007 you gave the
15 following testimony when we were discussing this
16 stipulation:

17 (As read)

18 "Question: Next page, page 6 of 15
19 subparagraph (B), well field repairs. First,
20 sentence, IIT will make any and all necessary repairs
21 to the GGCS to provide landfill gas conveyance
22 capacity to the plant in compliance with applicable
23 regulations. Have you formed any opinion as to what
24 the cost of that would be?

25 "Answer: Yes.

1 "Question: And what would the cost of
2 that be?

3 "Answer: Well, we have not been able
4 to conduct a full assessment of the state of
5 disrepair; therefore, the cost estimates range from
6 roughly 250,000 up to \$840,000."

7 Was that your testimony?

8 A Apparently, yes.

9 Q And you provided a budget to the
10 city/county for \$500,000 for well field repairs,
11 final cover repair and a flare, correct?

12 A Yes. The \$500,000 budget includes 250,000
13 for well head collection system repairs, plus the
14 amount of money for the flare, adding up to 500,000.

15 Q Well, didn't you testify at your deposition
16 that of that \$500,000, \$200,000 was for a flare,
17 300,000 was for well field repairs and final cover
18 repairs?

19 A I thought you -- could you read that to me,
20 because I don't recall.

21 Q That's fine. I will move on. I will move
22 on.

23 Now, the purpose of a flare is to back
24 up engines in case of a failure, correct?

25 A Partially. It's also for the purpose of

1 cleaning -- the CAAPP, Clean Air Act, requires you to
2 destroy all the gas collected to remain in
3 compliance. It could be, as often the case, that
4 there is not sufficient engine capacity at all
5 points. So during that point you will be running
6 both a flare and the engines.

7 Q Now, the stipulation between Peoria and IIT
8 calls for IIT to bring a third engine on line
9 specifically to back up the two primary engines,
10 correct?

11 A I believe that's what the stipulation says.

12 Q Okay. So then if there is a third back-up
13 engine to back up two existing engines, there is no
14 need for a flare as a back-up, correct?

15 A We don't know the -- that's not correct.
16 We don't know the total amount of gas being produced.
17 If it's like the curve that I showed earlier, two
18 engines would not be sufficient, and you would need a
19 third engine to make up the difference or a flare to
20 make up the difference.

21 Q And so in that situation the third engine
22 would be available to burn that additional gas?

23 A Yes, and there would be no back-up for gas
24 plant.

25 Q Now, of the \$840,000 high end of the

1 estimate that you gave at your deposition, 500,000
2 was for a new header system, correct?

3 A I believe that is correct. I can't
4 remember if I was referring to notes during my
5 deposition or not.

6 Q And the remaining 340,000 was your high-end
7 estimate for repair of the well field and final
8 cover, correct?

9 A Yes.

10 Q Now, there was some discussion regarding
11 the engineering preference of redesigning the header
12 system. When RTC put in the current Christmas tree
13 system, isn't it true that you were the CQA officer
14 who signed off on that design?

15 A Partially. We -- I -- we were the CQA
16 officers, but that is not for the purpose of signing
17 off on the design. It's for the purpose of signing
18 off on construction that has been constructed
19 according to the design.

20 Q Okay. But you did -- you executed the CQA
21 certification?

22 A Yes, we -- the system was constructed as
23 designed.

24 Q Now, the \$250,000 estimate that you gave
25 for well field repairs at your deposition, that is

1 the cost to correct known deficiencies in the system,
2 correct?

3 A That's right.

4 Q Now, you believe there are repairs needed
5 to the header system because monitoring reports show
6 an inability to exert vacuum in the header system
7 throughout the landfill, correct?

8 A That is correct.

9 Q Now, the inability to exert vacuum could be
10 due to a blockage in the header system, valves being
11 turned off, failure of a pipe or a condensate
12 handling system that's not working, correct? Any of
13 those are possibilities?

14 A Correct.

15 Q So correction of the condensate handling
16 system could very well solve any problems without
17 replacing the entire header system, correct?

18 A It could.

19 Q And isn't it true you've had difficulty
20 estimating the cost for repair of the GGCS due to
21 your inability to evaluate the system?

22 A Correct. We are not able to gather data on
23 the gas wells or condensate drip legs.

24 Q And, in fact, the \$840,000 high estimate
25 that you provided at your deposition, that was simply

1 verbally provided to you by Waste Management,
2 correct?

3 A Yes. That came through negotiations on
4 contingency planning.

5 MR. SCHMIDT: If we could look at
6 paragraph 7(c).

7 BY MR. SCHMIDT:

8 Q Looking again at Peoria Exhibit 22,
9 paragraph 4(c), isn't it true you have formed no
10 opinion regarding the cost for IIT to comply with
11 subparagraph 4(c)?

12 Let me withdraw that. Let me withdraw
13 it. I will just read from your deposition
14 transcript. Beginning on page 129, paragraph 11:

15 (As read)

16 "Let me ask you, have you formed" --
17 this is a question.

18 "Let me ask you, have you formed an
19 opinion as to what the cost would be for IIT to
20 comply with subparagraph (c)?

21 "Answer: No, not for IIT to comply
22 with it."

23 A Yeah, I -- I don't recall. I was just
24 reading through trying to remember what the second
25 half of the paragraph dealt with.

1 Q Now, you testified regarding certain NOV's
2 that you did not receive that you should have
3 received, correct?

4 A Yes. That's correct.

5 MR. SCHMIDT: If we could look at -- I
6 apologize, Your Honor.

7 BY MR. SCHMIDT:

8 Q Now, isn't it true that under the lease
9 notices are supposed to be sent to the City of
10 Peoria, Director, Department of Public Works?

11 A That is correct.

12 Q With a copy to the Peoria County
13 Administrator?

14 A Correct.

15 Q And you are not the Director of Department
16 of Public Works for the City of Peoria or the Peoria
17 Country Administrator, correct?

18 A Correct.

19 Q So when you say you did not receive them,
20 isn't it true that you did not receive them from the
21 city or county?

22 A That's correct. I just want to add, I do
23 receive some documents directly from RTC and Harry
24 Henderson.

25 Q There is no question pending.

1 And now under the stipulation, the
2 stipulation provides for what RTC -- I'm sorry. I
3 apologize.

4 What IIT needs to do to cure any
5 defaults. This stipulation does not require IIT to
6 put in a new design of a header system, correct?

7 A That's correct. It just requires
8 compliance with the Clean Air Act.

9 Q And you mentioned a Rust estimate of
10 landfill gas?

11 A Correct.

12 Q Now, that estimate is ten years old,
13 correct?

14 A It's probably 13 years old.

15 Q And so as you sit here now, you have no
16 basis to say whether or not that estimate is accurate
17 of current gas flow at the landfill, correct?

18 A It is the most accurate I have seen. I
19 have seen later estimates that are less correct than
20 that one is.

21 Q Now, there is no gas flow metering at the
22 site, correct?

23 A I have seen gas predictions that are less
24 accurate than the 1995 estimate.

25 Q That wasn't my question. There is no gas

1 flow metering on the site, correct?

2 A No, there is not.

3 Q Okay. Now, with regard to John Connolly's
4 pro forma, you base in part your disagreement with
5 the pro forma on your analysis of the electricity
6 being sold, correct?

7 A Yes.

8 Q And I believe you said you backed out from
9 that number to determine how much gas is available?

10 A That's right.

11 Q Okay. Now, didn't you just testify that a
12 substantial portion of the wells at the Peoria well
13 field are not operable?

14 A That's right.

15 Q Okay. And under the stipulation, IIT is
16 required to make the wells operable and bring the
17 system into compliance, correct?

18 A That's right.

19 Q So wouldn't that not increase the amount of
20 gas available for conversion to electricity?

21 A Yes, it will. That curve -- and I think
22 Mr. Connolly testified yesterday, he agrees there's
23 600 PSM being generated. If it's not being
24 generated, then it ends up being a compliance problem
25 one way or another. So there definitely needs to be

1 more capacity on site.

2 Q Okay. But you would agree with my
3 proposition that increasing the efficiency of the
4 well field may very well increase the amount of gas
5 available from the well field to be turned into
6 electricity?

7 A Yes. We've been saying that for a number
8 of years to RTC.

9 Q And, in fact, you just testified that there
10 may be so much gas there that a third engine is
11 needed --

12 A Correct.

13 Q -- to turn the gas.

14 Were any NOVs issued relating to RTC's
15 operations prior to the bankruptcy case?

16 A I do not recall.

17 Q Do you know if RTC ever received any
18 enforcement orders relating to its operation at
19 Peoria?

20 A I am not aware of any.

21 Q Now, you testified that penalties can be
22 assessed relating to NOVs, correct?

23 A That is correct.

24 Q Are you aware of any penalties that are
25 being assessed against RTC relating to the Peoria

1 site?

2 A No.

3 MR. SCHMIDT: One moment, Your Honor.

4 BY MR. SCHMIDT:

5 Q Are you familiar with an Anchor Engineering
6 model estimating the landfill gas at the Peoria site?

7 A I saw a copy of one last week, I think
8 connected to the Connolly deposition.

9 Q And did you look at that estimate to see --
10 to compare it to the Rust model regarding estimates
11 of how much gas is available?

12 A Basically, yes. I looked at it for the
13 assumptions that were in it.

14 Q And the Anchor Energy model showed a
15 greater amount of gas than the Rust model, correct?

16 A Yes, but it had incorrect assumptions in
17 it.

18 Q Did you look at an estimate from SCS
19 Engineers?

20 A I think that was included in the same
21 deposition.

22 Q Okay. And isn't it true the SCS Engineers
23 estimate predicted a higher flow of gas at the Peoria
24 site than did the Rust model?

25 A Yes, it did, but it had incorrect

1 assumptions in the model.

2 Q Now, you testified that there very well may
3 be enough gas to operate a third engine. Doesn't
4 that mean that Mr. Connolly's estimate in his pro
5 forma would be low because he's only assuming
6 operation of two engines?

7 A It is possible that that revenue could be
8 generated from three engines. And the reason I say
9 that is because three engines operating at 500 to
10 600 kilowatts are roughly equivalent to two engines
11 operating at 800 kilowatts, which he assumed.

12 Q Now, the gas model that you're relying on
13 does not go beyond 2008, correct?

14 A That is correct.

15 Q Okay. So you're testifying about Mr.
16 Connolly's assumptions for how much gas will be
17 available. We're in 2008 right now, and the contract
18 is going to go out for, I don't know, another 12
19 years or so. So isn't it true that based upon the
20 model you're relying upon, you don't know how much
21 gas is going to be at the site after 2008?

22 A Not exactly from that model, but gas
23 production in the landfill never increases.

24 MR. SCHMIDT: I have no more
25 questions.

1 THE COURT: Thank you, Mr. Schmidt.

2 Ms. Kujaca.

3 REDIRECT EXAMINATION

4 BY MS. KUJACA:

5 Q Mr. Sloan, there was some discussion about
6 your recommendation of the implementation of a
7 Christmas tree system when you were a CQA officer; is
8 that correct?

9 A Yes.

10 Q When was that?

11 A The original design of the Christmas tree
12 layout would have been in 1996. RTC had another
13 engineer working for them at that time.

14 Q Have there been any changes to the Peoria
15 Landfill system in those 12 intervening years?

16 A The second phase was designed by Dailey &
17 Associates. It added 10 to 20 wells. That was the
18 only change to the gas collection system.

19 Q What do you estimate it will cost to bring
20 two more engines on line?

21 MR. SCHMIDT: Objection. He just
22 testified he didn't have an estimate.

23 THE COURT: That's true.

24 BY MS. KUJACA:

25 Q Why did you suggest that a loop system may

1 be preferable to Peoria?

2 MR. SCHMIDT: Objection. Relevance.

3 MS. KUJACA: It was asked on cross.

4 THE COURT: Well, no, the question
5 really would be if -- if it's necessary, not whether
6 it is desirable. As I read the stipulation, there's
7 no requirement for IIT under this agreement to
8 reimburse Peoria for something that's merely
9 desirable. In the well field maintenance section, it
10 says IIT shall reimburse Peoria for Peoria's
11 necessary repairs.

12 BY MS. KUJACA:

13 Q Are there any benefits to having a loop
14 system?

15 THE COURT: Again, that would not be
16 relevant.

17 MS. KUJACA: Okay.

18 THE COURT: If you want to ask him
19 whether a loop is necessary, you can certainly do
20 that.

21 BY MS. KUJACA:

22 Q Do you believe a loop system is necessary?

23 A I believe -- I believe it's necessary and
24 would recommend it if the Peoria city/county was to
25 operate it, because it is easier to balance, tune the

1 well field and maintain -- most importantly maintain
2 compliance with the Clean Air Act.

3 Q Why do you have difficulties gathering
4 information regarding the GGCS?

5 A I don't know if I know the answer to that.
6 It is required under the lease, but we have --
7 information has not always been forthcoming or
8 timely.

9 Q Forthcoming or timely from whom?

10 A RTC.

11 Q There was a question as to whether you
12 received VNs regarding the Peoria Landfill. There is
13 a question as to whether Peoria received them in lieu
14 of you. Does --

15 MR. SCHMIDT: Objection. That
16 question was not asked.

17 THE COURT: That's true. That wasn't
18 the question.

19 MS. KUJACA: Okay.

20 BY MS. KUJACA:

21 Q Does Peoria typically forward you documents
22 regarding the landfill?

23 A Yes, they do.

24 Q Is there any reason Peoria would not
25 forward you documents regarding the landfill?

1 MR. SCHMIDT: Objection. Foundation.

2 THE COURT: Overruled.

3 THE WITNESS: No, there would be no
4 reason.

5 BY MS. KUJACA:

6 Q To your knowledge, is there any reason why
7 the penalties have not been assessed against Peoria
8 by the IEPA?

9 MR. SCHMIDT: Objection. Foundation.

10 THE COURT: Overruled.

11 THE WITNESS: We have talked --
12 discussed the issue with EPA, negotiated with EPA.
13 As a public body, there may be more leniency. I do
14 not know. But public bodies are able to call on
15 legislators, for example, and have -- may have more
16 access to regulators than private firms do.

17 BY MS. KUJACA:

18 Q There was discussion regarding various
19 models for gas production. Which model do you find
20 the most reliable as to the historical gas production
21 in Peoria?

22 A The 1995 Rust model.

23 Q What would that -- if you know, what would
24 that Rust model suggest after the year 2008?

25 MR. SCHMIDT: Objection, Your Honor.

1 He didn't prepare that model, and counsel is asking
2 him to speculate as to what the people who did
3 prepare the model would have said it --

4 THE COURT: No, I don't think so.
5 Based on his understanding of well field gas
6 production, he can testify what the implication is in
7 the model past 2008. The objection is overruled.

8 THE WITNESS: The regulations and
9 Clean Air Act specify using the first order decay
10 equation for gas -- predicting gas. So it continues
11 to decrease and decay. In this area of the curve,
12 it's fairly linear. So a first estimate would be
13 just linear decreases, extension of the Rust
14 production past 2008.

15 MS. KUJACA: Thank you. Nothing
16 further, Your Honor.

17 THE COURT: Okay. You may step down
18 Mr. Sloan.

19 THE WITNESS: Thank you.

20
21 (Witness excused.)

22 THE COURT: Any other witnesses, Ms.
23 Kujaca?

24 MS. KUJACA: We would like to call
25 Mr. Reed as a rebuttal witness.

1 MR. JORDAN: If she could identify the
2 areas of rebuttal, because I'm not sure --

3 MS. KUJACA: Mr. Connolly testified
4 that RTC has a valid CAAPP permit and Mr. Reed is
5 here to rebut that.

6 MR. JORDAN: I'm sorry. He did what?

7 MS. KUJACA: Mr. Connolly testified
8 that RTC has a valid CAAPP permit at this time.

9 THE COURT: At Peoria?

10 MS. KUJACA: Yes.

11 THE COURT: I don't think there is any
12 dispute about the status of the CAAPP permit at
13 Peoria. The one that had been approved is now
14 terminated, but there is an application for a new one
15 pending.

16 Is he going to say anything different
17 than that?

18 MS. KUJACA: Mr. Reed can testify that
19 both the permit and application shields have expired,
20 leading to the fact that RTC has no current permit to
21 operate at the Peoria site.

22 MR. JORDAN: He could, but he
23 testified at his deposition that it's sitting on the
24 desk and there are 150 permits before it.

25 THE COURT: I will hear what he has to

1 say on that point.

2 MR. JORDAN: Now, are we going to have
3 him on once or twice?

4 THE COURT: Why would he be on twice?

5 MR. JORDAN: Well, because Allied
6 hasn't gone forward, and I just want to make sure --

7 MR. BOHAN: Your Honor, I would --
8 Your Honor -- what I would suggest is that we do our
9 direct of Mr. Reed, which is going to be I think very
10 short after Ms. Kujaca does her direct.

11 THE COURT: That's fine. That would
12 make the most sense. I think that's what Mr. Jordan
13 is suggesting would be the best way.

14 MR. JORDAN: Now, with regard to
15 Allied, just to be clear, we took Mr. Reed's
16 deposition last Friday, and due to a problem with
17 transcription, Mr. O'Meara and I got a useless
18 transcript over the weekend. And I think we both
19 received it on Monday.

20 And I read Mr. Reed's transcript last
21 night. And we would like to eliminate the need for
22 Mr. Reed's testimony as to Allied on the core issue
23 since Allied removed the GGCS from the Springfield
24 site when Allied removed the over-height and
25 over-girth at the Springfield Landfill.

1 Mr. Reed is expected to testify that
2 the Springfield CAAPP permit is void. And as such,
3 we are willing to stipulate that the trust will not
4 seek a transfer of the CAAPP permit and instead file
5 a new construction permit application and a new CAAPP
6 permit application for the conduct of business at the
7 Springfield site.

8 And given that stipulation, I don't
9 know what Allied would have to rebut with regard to
10 the issue of validity of the existing permit at the
11 Springfield site because we are not going forward on
12 a transfer of that for the trust.

13 MR. BOHAN: Well, Your Honor, I think
14 that goes a long way to answering some of what I
15 was -- a lot of what I was going to be asking
16 Mr. Reed. It directly rebuts Mr. Connolly's
17 testimony that there is a valid permit in place in
18 the name of RTC. That's just not true. That permit
19 is void because RTC removed those two engines and
20 that caused the permit by its own terms to --

21 THE COURT: Well, if you have a
22 stipulation to that effect, do you need to question
23 the witness on it?

24 MR. BOHAN: The only other questions I
25 would ask him, Your Honor, are primarily foundation

1 questions for the introduction of the NOV's under Rule
2 803, the public records exception.

3 THE COURT: Well, again, you're not
4 going to introduce them for the truth of the matter
5 asserted, and I've already allowed their introduction
6 for the notice that they give.

7 MR. BOHAN: Well, Your Honor, I
8 believe they are admissible, actually, for the truth
9 of the matter because they are public records. They
10 are made by someone charged by public law to make the
11 observations that they contain. And I believe they
12 are -- I believe they fit very comfortably within the
13 public records exception, in addition to the business
14 records exception.

15 MR. JORDAN: Your Honor, actually,
16 that's not true, because all of these items are
17 allegations as opposed to findings. And so --

18 THE COURT: What federal rule of
19 evidence do you --

20 MR. JORDAN: It's 803.

21 MR. BOHAN: 803 --

22 THE COURT: I just am highly dubious
23 of that proposition. You might just as well say that
24 every indictment ought to be admitted for the truth
25 of the matter asserted.

1 MR. BOHAN: The rule, Your Honor,
2 actually speaks to criminal charges, and they are not
3 within the rule. Rule 803 provides as follows:
4 803(8), "A report in any form of a public office or
5 agency setting forth, (b) matters observed pursuant
6 to duty imposed by law as to which matters there was
7 a duty to report" -- and then there's the exclusion
8 for criminal cases -- "fit within the exception."

9 That's exactly what we have here, an
10 observation is made by someone charged by law with
11 making the observation and reporting on it.

12 MS. KUJACA: That's what I was
13 referring to earlier, Your Honor --

14 MR. JORDAN: However, he isn't
15 referring --

16 THE COURT: Wait a second, wait a
17 second, wait a second. It's actually the sub (c) of
18 that that perhaps is relevant here, reports or
19 statements in civil actions and proceedings, in such
20 civil actions and proceedings, factual findings
21 resulting from an investigation made pursuant to
22 authority granted by law, unless the sources of
23 information or other circumstances indicate lack of
24 trustworthiness.

25 MR. JORDAN: Actually --

1 THE COURT: Well, actually, what I am
2 going to do, I will take a brief recess and look at
3 whether Rule 803(8)(c) would cover notices of
4 violation in a civil enforcement proceeding by an --

5 MR. JORDAN: Can I just highlight one
6 fact, which is that the documents take reports that
7 are filed by other people outside of the agency and
8 then submit it against that. It's not that the --
9 it's not the investigation of the agency that would
10 be within these various items.

11 And they're allegations. And so the
12 relevance of allegations unproven, the prejudicial
13 value far outweighs the probative value of that, in
14 addition to which, Mr. Reed is in the permit section
15 and not in the compliance section.

16 THE COURT: You're giving me, I think,
17 a showing that the sources of information or other
18 circumstances indicate a lack of trustworthiness. I
19 expect that's what you're arguing now.

20 MR. JORDAN: Well, I think we are
21 really arguing admission issues as opposed to Mr.
22 Reed's testimony issues at this point. But, yes, I
23 am arguing that.

24 THE COURT: All right. I will take a
25 brief recess and review this.

1 (Brief Recess.)

2 THE CLERK: Court is reconvened.

3 THE COURT: Do we have everyone here?

4 MR. SCHMIDT: Mr. Jordan stepped out
5 for just a moment.

6 (Brief pause.)

7 MR. JORDAN: Sorry, Your Honor. I
8 went down the hall.

9 THE COURT: As it turns out, Rule
10 803(8) has in fact been used to allow the admission
11 of reports very similar to the ones that are being
12 sought to be introduced now. In particular, as
13 reflected in a Law Review article, 33 Arizona State
14 Law Journal 265, EEOC preliminary determinations have
15 routinely been admitted under Rule 803.

16 And a University of Kansas Law Review
17 article, 38 University of Kansas Law Review 767,
18 1990, collects a large number of authorities
19 regarding the admission of government fact findings
20 under Rule 803(8)(c). And although the article
21 opines that the rule should be more stringently
22 limited, it does indicate substantial authority for
23 the proposition that matters of this sort are
24 admissible.

25 However, as I indicated earlier, the

1 rule itself provides an exception to admissibility in
2 situations where the circumstances would indicate
3 that the findings of fact set forth in the
4 administrative complaint are not trustworthy. So if
5 you would like to make an argument on that point, I
6 would hear it, Mr. Jordan.

7 MR. JORDAN: Sure.

8 THE COURT: But otherwise I'd overrule
9 your objection.

10 MR. JORDAN: My research has disclosed
11 that the factors to review are the timeliness of the
12 investigation, special skills or experience of the
13 official, and whether a hearing was held and the
14 level at which it was conducted.

15 Now, I would note that the Law Review
16 articles that you cite I don't have a quibble with
17 because what they relate to are actual fact finding.
18 And what these reports are are submissions to a party
19 seeking a response saying we heard about this and we
20 want to know what your position is on it and that
21 maybe we didn't like your report, in addition to
22 which this witness being in the permit section and
23 not in the compliance section wouldn't be able to
24 cast any evidence with regard to these reports in any
25 event.

1 As I said, really it's an admission
2 question. But since there is no hearing, since we
3 have no knowledge as to the special skill or
4 experience of the officials who prepared them, and
5 since the matters don't -- did not, in any event,
6 relate to an order of enforcement that was entered
7 and an indication that the allegations were valid,
8 then their probative value is far outweighed by the
9 prejudice our client would suffer because our client
10 is in the reflective glare of these unsupported
11 allegations which have never gone to an enforcement,
12 even though if, in fact, there was a basis for
13 enforcement, one would expect that enforcement would
14 follow.

15 Thank you, Your Honor.

16 MR. BOHAN: Your Honor, I believe the
17 rule creates its own exception. As Your Honor noted,
18 the exception is sources of information or other
19 circumstances indicating a lack of trustworthiness.
20 There are none here. Mr. Jordan hasn't been able to
21 identify any. As a result, we're squarely within
22 803(8).

23 Now, he does make a Rule 403 argument,
24 Your Honor. But in my view his Rule 403 argument
25 more goes to the weight of the evidence rather than

1 its admissibility. He's going to argue that you
2 should take into consideration not just the notices
3 of violation, but RTC's response to the notice in
4 which it routinely blamed the landfill owners. Your
5 Honor should consider that, I guess. But these
6 documents themselves are squarely admissible under
7 Rule 803(8).

8 THE COURT: I am just looking, as an
9 example, at Peoria Exhibit 11, which states in the
10 cover letter that this is a violation notice based
11 upon a review of available information and an
12 investigation by representatives of the Illinois
13 Environmental Protection Agency.

14 Then attachment A says, "per
15 observations by Matthew Cookingham and Wayne Kahela,"
16 who in context would appear to be representatives of
17 the IEPA, "the following facts are true," and these
18 are not, from what I can tell, opinions as much as
19 they are factual observations: "That interior
20 wellheads in the collection system were not all
21 operated at an oxygen level less than five
22 percent." That would appear to indicate a reading of
23 a wellhead oxygen level by the IEPA representatives
24 here.

25 Let me just see if there is anything

1 else that would be other than actual observations of
2 fact by IEPA authorities. Well, certainly when they
3 say that there is a failure to comply with all the
4 conditions, that's not an observation. But to the
5 extent that these violation reports reflect
6 observations or readings made by IEPA officials, I
7 would find no lack of trustworthiness.

8 MR. JORDAN: Well, you know, really
9 the problem with that is that Peoria, Allied,
10 whomever, had the ability to bring these people
11 forward. So we don't have the ability to
12 cross-examine these people as to the underlying
13 nature of their observations.

14 THE COURT: That would be true with
15 regard to every document that would be admissible
16 under Rule 803(8). In each case the document would
17 be admitted in lieu of live testimony by the person
18 who made the observation. So that can't be a basis
19 for denying admission.

20 I think what this reflects is
21 something that, contrary to the potential conclusion
22 of a lack of trustworthiness, actually indicates a
23 substantial degree of trustworthiness in that we
24 would be dealing with a discrete measurement made by
25 an official of the agency who would be expected to be

1 able to use the measurement equipment appropriately.

2 So without a reason to believe that they would have
3 measured improperly or improperly recorded their
4 measurements, I would find observations of this sort
5 to be admissible.

6 Now, if there are other violation
7 reports that are based on something other than
8 observations by IEPA officials, if there is something
9 in which the violation notice is based upon some
10 report made to the IEPA by someone else, I would have
11 a different determination. But where what we have
12 appear to be reflections of actual readings made by
13 IEPA employees in the scope of their responsibilities
14 as employees, I'd admit the documents over the
15 objection.

16 MR. BOHAN: Your Honor, having then
17 heard Your Honor's ruling, based on Mr. Jordan's
18 statement in open court that IIT will no longer and
19 is no longer asserting the position that there is a
20 valid CAAPP permit at the Sangamon Valley Landfill,
21 we will not be calling Mr. Reed to rebut that portion
22 of Mr. Connolly's testimony.

23 THE COURT: All right. Ms. Kujaca,
24 whatever brief testimony you want to elicit, you may
25 do so.

1 MS. KUJACA: Okay. I call Mr. Michael
2 Reed.

3 (Witness sworn.)

4 MICHAEL REED, WITNESS, SWORN

5 DIRECT EXAMINATION

6 BY MS. KUJACA:

7 Q Mr. Reed, state your name and spell your
8 last name for the record, please.

9 A My name is Michael Reed. Last name spelled
10 R-e-e-d.

11 Q Where are you currently employed?

12 A I am currently employed with the State of
13 Illinois Environmental Protection Agency.

14 Q Briefly, what is your educational
15 background?

16 A My educational background is I have a
17 master's degree in environmental engineering, and I
18 have a bachelor's degree in electrical engineering.

19 Q How long have you been employed with IEPA?

20 A I have been employed with the Illinois EPA
21 for a total of nine years, six of those years with
22 the Bureau of Air Field Operations and three of those
23 years in my current position which is the Bureau of
24 Air Permit section.

25 Q And between those six and three year

1 periods, you were employed in private practice,
2 correct?

3 A Yes, I was. I was employed at the Robbins
4 Resource Recovery facility in Robbins, Illinois, as
5 well as Midwest Generation in Pekin, Illinois.

6 Q And what were your roles at those
7 facilities?

8 A The environmental compliance manager.

9 Q Thank you.

10 What is your current title again?

11 A My current title is CAAPP, Clean Air Permit
12 Program, CAAPP, unit manager.

13 Q What does that job entail? What are your
14 duties?

15 A My duties are to ensure that the CAAPP
16 program is implemented properly in the State of
17 Illinois. I assign permits to the 11 engineers that
18 work under me to draft those. I review those permits
19 that they draft. We also consult with other sections
20 of the bureau in regards to technical issues that may
21 come up. And I write policy and procedure to ensure
22 that the CAAPP program is implemented properly, as
23 well as making interpretations as well on applicable
24 requirements.

25 Q Who do you report to?

1 A I report directly to Ed Bakowski, the
2 permit section manager.

3 Q And you said you have 11 staff engineers
4 that report to you?

5 A Yes. That's correct.

6 Q Do you have any other staff members that
7 report to you?

8 A No, I do not.

9 Q Okay. You are only involved with air
10 permitting requirements relating to the landfills,
11 correct?

12 A That is correct.

13 Q You have no involvement whatsoever with the
14 land permits, right?

15 A No.

16 Q Okay. Are you the person at the IEPA who
17 determines whether a CAAPP permit is granted?

18 A Yes.

19 Q Do you issue violation notices?

20 A I do not issue violation notices.

21 Q Are you aware of them?

22 A Yes, I am aware of them.

23 Q Do you receive and review them in the
24 course of your work for the IEPA?

25 A Yes, I do, as well as my engineers. There

1 is what we call a co-review of those. When our field
2 operations identifies a violation or when we identify
3 a violation, our compliance unit will draft up that
4 violation notice and then it will come back to the
5 permit section for a co-review to see if there is any
6 input. And it also goes out to other sections of the
7 bureau as well for co-review before a final draft is
8 provided to the source.

9 Q Okay. Do you keep copies of the VNs in
10 your files?

11 MR. JORDAN: Your Honor, objection. I
12 mean, this is not rebuttal. We already know of the
13 VNs and the other documents, so this can't be in
14 rebuttal to that.

15 THE COURT: That's sustained.

16 MS. KUJACA: That's fine, Your Honor.
17 I will move on.

18 BY MS. KUJACA:

19 Q What type of CAAPP applications, permit
20 applications and modifications are there? There's a
21 new application, correct?

22 A Yes. We have what we call new or initial
23 permit applications. Then there are renewal
24 applications, and then there are three different
25 types of modifications. One is an administrative

1 amendment, one is a minor modification, and the other
2 is a significant modification.

3 Q Will IEPA review the compliance history of
4 a permit applicant when determining whether to issue
5 a new application?

6 MR. JORDAN: Objection, Your Honor.
7 Again --

8 THE COURT: Sustained. That's not
9 rebuttal.

10 BY MS. KUJACA:

11 Q Are you familiar with the Peoria Landfill?

12 A Yes. I am familiar from reviewing the
13 permit application.

14 Q When did you first have permitting issues
15 with the Peoria Landfill?

16 A Shortly after the renewal application came
17 in. I couldn't give you an exact date.

18 Q Were you aware that RTC was in bankruptcy
19 beginning in 1999?

20 A I became aware of that at some point in
21 time. The exact date I couldn't tell you.

22 Q Did the bankruptcy filing have any effect
23 on the permit status with your office?

24 MR. JORDAN: Objection, Your Honor.
25 Again, this is not in rebuttal to anything.

1 THE COURT: No. To the extent that
2 it's rebutting testimony that there is a permit in
3 place, it may very well be relevant -- rebuttal,
4 excuse me. The question can stand.

5 MS. KUJACA: The question is what?
6 I'm sorry.

7 THE COURT: The question may stand.

8 MS. KUJACA: Oh, the question may
9 stand.

10 THE COURT: You can answer the
11 question.

12 THE WITNESS: Generally a bankruptcy
13 does not impact any permitting status.

14 BY MS. KUJACA:

15 Q Are the IEPA CAAPP permits generally
16 transferable?

17 A IEPA permits are not transferable.

18 Q Are they considered property?

19 A No, they are not.

20 Q What is the standard procedure used to
21 transfer the interest in a CAAPP permit?

22 A Well, a permit is not transferable.
23 However, a source can make an ownership change or a
24 name change on that permit, and that would be done
25 through two potential avenues. One would be an

1 administrative amendment or the other would be a
2 significant modification. And the way you determine
3 which one of those is dependent upon the compliance
4 status of the source at the time.

5 Q Does the new permit holder have to meet the
6 same requirements to hold the permit as the original
7 holder?

8 A We have to know who the source is, what
9 type of application they are applying for, what their
10 compliance status is at the time, what applicable
11 requirements we may have to modify or address for
12 that type of application, what type of process it is
13 that we are permitting, a description of that, as
14 well as a whole slew of other miscellaneous
15 activities as well.

16 Q Can a noncompliant landfill generally do an
17 administrative name change?

18 MR. JORDAN: Your Honor, I am not sure
19 if there is any testimony about the administrative
20 name change or anything else. I don't know what this
21 is in rebuttal to.

22 THE COURT: No, the question is
23 whether there is currently a CAAPP permit or permit
24 shield in place at Peoria, and I believe this
25 question is relevant to that issue, and so the

1 objection is overruled.

2 THE WITNESS: Could you repeat the
3 question.

4 MS. KUJACA: Certainly.

5 BY MS. KUJACA:

6 Q Can a noncompliant landfill do an
7 administrative name change as we just discussed?

8 A A noncompliant source would have to have a
9 compliance scheduled that's approvable by the
10 Illinois EPA and that would require a significant
11 modification.

12 THE COURT: What constitutes an
13 applicant being noncompliant?

14 THE WITNESS: That is when we have
15 outstanding violation notices in our file and those
16 have been referred to the attorney general's office.
17 That's what we generally determine to be
18 noncompliant.

19 BY MS. KUJACA:

20 Q I would like to refer you to Peoria Exhibit
21 No. 3. Mr. Reed, are you familiar with this
22 document?

23 A Is that the document in front of me on the
24 screen?

25 Q Yes, it is.

1 A Okay. Yes. It is hard to -- hard to see
2 it -- if I had the whole document in front of me --
3 but it appears to be the -- the Clean Air Act Permit
4 Program and Title 1 permit for Resource Technology
5 Corporation. Yes, that's fine.

6 Q And you routinely --

7 A It's the CAAPP permit.

8 Q I'm sorry.

9 -- you routinely review CAAPP permit
10 documentation such as this in the course of your
11 duties at the IEPA, correct?

12 A Yes, I do.

13 Q Are permit documents such as this routinely
14 recorded or filed in the offices of the IEPA?

15 A Could you repeat the question.

16 Q Are permit documents such as the one in
17 front of you routinely recorded or filed in the
18 offices of the IEPA?

19 A Yes. We keep a copy of this in the permit
20 file for the source.

21 Q And CAAPP permits such as this are
22 authorized by the IEPA regulations, correct?

23 A That is correct.

24 Q Okay. Did you review this document in the
25 course of your duties?

1 I'm sorry. You already answered that.

2 You keep a copy of this in your files
3 as CAAPP unit manager; is that correct?

4 A Yes. Well, I don't have a personal file,
5 but this is kept in the permit file for the source.

6 Q Okay. Who originally applied for this
7 permit, if you can tell?

8 A The original applicant would be the
9 permittee, and that was identified as Resource
10 Technology Corporation.

11 Q This permit was solely held by Resource
12 Technology Corporation and not Peoria; is that
13 correct?

14 A Yes. That's correct.

15 Q And it looks like this was submitted in
16 September of 1999; is that correct?

17 A Yes. We received the application for this
18 permit on September 13th, 1999.

19 Q If you could briefly walk me through the
20 process of obtaining a permit such as this, what is
21 required?

22 A Yes. This is -- this would have been the
23 initial permit, CAAPP permit, for the source at the
24 time. I was not involved in the direct issuance of
25 this permit, but I can explain to you the process

1 because it has not changed.

2 An applicant will submit an
3 application to the Illinois Environmental Protection
4 Agency. That application will go through what we
5 call an administrative completeness determination
6 where a clerical will evaluate to make sure that all
7 of the forms are present for us to continue our
8 review of that application.

9 Once that has been determined to be
10 complete, we would issue a completeness determination
11 letter to the source. And then that permit would
12 come to me as the manager of that unit. And I would
13 assign it to one of my engineers. And they would do
14 what we call a technical review.

15 And in that technical review, we
16 determine the substance of the application and what
17 is included on those forms, making sure that all the
18 applicable requirements have been identified
19 correctly, all record keeping and reporting has been
20 identified, testing, monitoring, that sort of thing.

21 Once that is done, the engineer will
22 draft the permit, and then he will turn it in to me,
23 the CAAPP unit manager, and I will review it to make
24 sure that he has done his job properly, that all the
25 elements necessary for a CAAPP permit are present.

1 Once I am done reviewing it, the
2 permit will then go to public notice. Public notice,
3 that is generally a 30-day time period. In that
4 30-day time period, that allows the public, the
5 source, U.S. EPA, any interested parties, to make any
6 comments on that permit, identify any errors that we
7 may have made, any suggestions to make the permit
8 more enforceable, that sort of thing.

9 During that 30-day time period, we can
10 also obtain a request for a hearing. If we obtain a
11 request for a hearing, we have to get approval from
12 the director in order to hold that hearing.

13 Once we do that, we have to notice the
14 date and time and place of the hearing 45 days in
15 advance. And then once the hearing is held, we have
16 to extend the public comment period another 30 days
17 beyond that date.

18 Once we have gone through the public
19 notice period, we receive any comments from any
20 hearings or any written comments submitted by any
21 interested party. We would evaluate those comments,
22 either make changes to the permit, if that is
23 required based upon the comment, or we would write a
24 response to responsiveness summary addressing all the
25 comments that we did not make changes to the permit

1 on and why we did not make those changes.

2 Once that is complete, the permit then
3 goes up to U.S. EPA for a 45-day review period by the
4 U.S. EPA. At that time the U.S. EPA can object to
5 the permit or they can allow the permit to be issued.
6 If they object to the permit, the permit then is
7 remanded back to us and we have to correct all the
8 deficiencies that they've identified. If they don't
9 object, then we would issue the permit.

10 Q And this whole process takes some time,
11 doesn't it?

12 A Yes, it does.

13 Q Because it looks like the date received on
14 this was 1999, but the date issued was 2002; is that
15 correct?

16 A Yes. That's correct.

17 Q Does it typically take nearly three years
18 to grant a permit?

19 A Yes. We are generally looking at three to
20 five years for us to get a permit done.

21 Q Okay. When was this permit set to expire?

22 A The expiration date on this permit is
23 July 2nd, 2007.

24 Q What exactly is a responsible official on
25 an IEPA permit?

1 A A responsible official is identified and
2 defined in the Environmental Protection Act.

3 MR. JORDAN: Your Honor, I think this
4 is terrific we're finding out about permits, but none
5 of this goes to whether the permit is in place or
6 not.

7 THE COURT: That is the question, Ms.
8 Kujaca.

9 MS. KUJACA: Actually, it does,
10 because the wrong person, somebody who was not the
11 responsible official, signed the renewal permit,
12 which makes it --

13 THE COURT: Okay.

14 MS. KUJACA: -- void in the IEPA's
15 offices.

16 THE COURT: If this is preliminary to
17 that --

18 MS. KUJACA: Yes, it is.

19 THE COURT: -- then I'll allow it.
20 That's fine.

21 BY MS. KUJACA:

22 Q Does your office accept documents submitted
23 by someone who isn't a designated person?

24 A No, we do not.

25 Q If a document is submitted by someone who

1 is not a designated person, is it considered a valid
2 submission then?

3 A If the person that submitted the
4 application is not the responsible official that has
5 been identified in the issued permit, then we would
6 have to reconcile that. So, yes, we do not -- we do
7 not determine that to be valid.

8 Q Thank you.

9 Peoria is considered a single source
10 permit, correct?

11 A Yes. That is correct.

12 Q What does that mean?

13 A A single source is where a facility is -- a
14 source is considered to be the same as another source
15 or entity operating on a contingent or adjacent
16 property, under common control or a support facility
17 or has the same major group SIC code number.

18 And Resource Technology and Peoria
19 County Landfill have been identified as a single
20 source. They meet all those criteria. And when they
21 are a single source, what has to be done is the
22 emissions from each entity has to be added together
23 to determine what type of permitting action takes
24 place either construction or operating.

25 Q Thank you.

1 Under what circumstances are these
2 permits renewable?

3 A Under what circumstances?

4 Q Are these permits generally renewable?

5 A Yes, they are.

6 Q What has to be done in order to obtain a
7 renewal permit?

8 A A permit has to be -- the application for
9 that renewal permit has to be submitted or received,
10 in our case, at the -- in the permit section, nine
11 months prior to the expiration date.

12 Q And it can be up to 12 months prior; is
13 that correct?

14 A Yes. Some of the older permits have that
15 condition. The newer permits, we've taken the 12
16 months out.

17 Q Does your office ever deny a CAAPP permit
18 renewal?

19 A We have not denied any renewals to this
20 point. However, one of my engineers is currently
21 working on a notice of intent to deny. Renewals are
22 just now coming in, so we have not been issuing a lot
23 of them.

24 Q What is a permit shield?

25 A A permit shield is a shield that allows the

1 source to operate in compliance with this permit such
2 that it's not in violation of the act until such --
3 during the pendency of the permit.

4 Now, an application shield is a little
5 bit different. And that is what is given to a source
6 if they have a timely and complete application that
7 has been received or submitted to the agency. That
8 protects the source from having their existing CAAPP
9 permit expire. So it's such that they are not
10 operating without a CAAPP permit until the agency
11 would issue a renewed permit.

12 Q Did RTC have a permit shield under this
13 permit?

14 A I would have to see when we received the
15 renewal application.

16 Q Okay. Would it have an application shield?
17 Is that the same --

18 A I would have to see when it was received.

19 Q Okay. We'll look at that in a moment.

20 MS. KUJACA: If we could move to
21 Peoria Exhibit 21, Your Honor.

22 BY MS. KUJACA:

23 Q On your screen is Peoria Exhibit No. 21.
24 Are you familiar with this document?

25 A Yes, I am. This is a CAAPP application

1 completeness determination letter.

2 Q Did you review this document in the course
3 of your duties at IEPA?

4 A Yes, I did.

5 Q Did you actually sign this?

6 A Yes, I did sign this on behalf of my direct
7 supervisor.

8 Q And those are your initials, MTR?

9 A Yes. That is correct.

10 Q What is a certificate of completeness?

11 A Well, there is no such thing as a
12 certificate of completeness. But the completeness
13 determination letter basically states that we have
14 reviewed the application and we have determined that
15 it is administratively complete for us to continue
16 the process to determine out -- you know, towards
17 issuance of the permit.

18 Q Does it have anything to do with whether it
19 was submitted timely?

20 A No, it does not.

21 Q Does it have anything to do with whether it
22 will eventually be renewed?

23 A No, it does not.

24 Q Attached to this document --

25 MS. KUJACA: If we could scroll down,

1 Your Honor.

2 BY MS. KUJACA:

3 Q Attached to this is the renewal
4 application; is that correct?

5 A The renewal application for Resource
6 Technology Corporation.

7 Q When was this renewal for the RTC -- excuse
8 me.

9 When was the renewal for the RTC
10 permit received by your office?

11 A I'm looking for the date stamp.

12 Q Should we scroll up?

13 A Probably down. It's going to probably be
14 on the 200 form.

15 MS. KUJACA: You know what, I will
16 withdraw that question and we will get back to that
17 in a moment.

18 THE WITNESS: I think I saw a date
19 stamp somewhere.

20 MS. KUJACA: I'm sorry, what page?

21 I apologize, Your Honor. I thought I
22 had this marked.

23 THE WITNESS: I think if you go to the
24 end of the file. This is the actual permit itself.

25 MS. KUJACA: I believe it is an

1 exhibit to the renewal, if I am not mistaken.

2 If I had a hard copy, I could --

3 BY MS. KUJACA:

4 Q Presuming your office determined that this
5 was received on -- I'm sorry.

6 If we go to the first page of the
7 CAAPP application, completeness determination. There
8 is a date received on there.

9 A Yes. That is correct.

10 Q I'm sorry. Can we use that as the date --

11 THE COURT: What page?

12 MS. KUJACA: The very first one.

13 THE WITNESS: Yes. That date would be
14 consistent with the date that we stamped it as being
15 received.

16 MS. KUJACA: Thank you. I apologize
17 for the confusion.

18 THE WITNESS: And that date is
19 October 4th, 2006.

20 BY MS. KUJACA:

21 Q So your office determined that the renewal
22 application was received on that date, correct?

23 A We actually made the determination on
24 December 5th, 2006. But the date received of the
25 application was October 4th, 2006.

1 Q How does mail get stamped received at the
2 IEPA? How is that date determined?

3 A When an application is mailed in to us, it
4 comes through our mailroom and goes directly to a
5 logging clerk that date stamps everything that came
6 in for that day.

7 Q If the -- has a permit shield expired if a
8 renewal application is received two days late?

9 A A permit shield would expire if the permit
10 expired. An application shield really does not
11 expire per se.

12 Q Okay.

13 A It could go away at any time, given the
14 response to additional information requests.

15 Q And do you know when the RTC renewal
16 application was due in your office?

17 A Yes. You would look at the expiration date
18 and count back nine months from the expiration date.

19 Q And that being in Exhibit 3, that
20 expiration date was July 2nd, 2007, correct?

21 A Yes. That's correct.

22 Q So when was this application due in your
23 office?

24 A It was due in our office on October 2nd,
25 2006.

1 Q But the date received by your office is
2 October 4th, correct?

3 A Yes. That is correct.

4 Q Can a renewal application be accepted if
5 it's proven to your office that it was in the mail on
6 the renewal date?

7 A We actually accept all applications.
8 Whether or not an application is timely is, like I
9 have said, based upon the date received. What would
10 then happen is once -- if we deem a source to be
11 untimely in their submittal, eventually a VN would be
12 issued, a violation notice would be issued for an
13 untimely application once that permit expires. And
14 then at that time our division of legal counsel would
15 evaluate any additional proof or evidence that has
16 been tendered to the agency to make a determination
17 as to whether or not it was actually timely.

18 Q Has any of that proof been tendered to the
19 IEPA?

20 A No, not to my knowledge.

21 THE COURT: Well, the proof would only
22 be tendered after a violation notice, right?

23 THE WITNESS: Yes. That's generally
24 the case, sir.

25 BY MS. KUJACA:

1 Q Is it your understanding that that
2 violation notice has gone out?

3 A I am not aware that a violation notice for
4 that has gone out.

5 MS. KUJACA: If you could give me one
6 moment, Your Honor.

7 THE COURT: Well, just so I'm clear on
8 this point. If evidence were presented indicating
9 that the application was mailed prior to the due
10 date, would that suffice for purposes of creating a
11 timely application?

12 THE WITNESS: Yes, it would, sir.

13 BY MS. KUJACA:

14 Q Has that documentation been received?

15 THE COURT: Well, you already asked
16 that question.

17 MS. KUJACA: Okay.

18 THE COURT: I think he answered no.
19 But that's why I asked if it would ordinarily be
20 submitted prior to a violation notice. And you went
21 through that whole subject. So I think I understand
22 the situation now.

23 BY MS. KUJACA:

24 Q Is that your determination to make?

25 A At this point it is no longer the permit

1 section's determination to make.

2 Q Where does that determination go to at that
3 point?

4 A It would go to our division of legal
5 counsel.

6 Q Okay. If I can show you the certified mail
7 receipts labeled as IIT Exhibits 69 and 70. Have you
8 seen this document?

9 A No, I have not.

10 Q It purports to be the certified mail
11 receipts for the renewal for the RTC application.
12 Can you tell me what the date is of the stamp on
13 this?

14 THE COURT: You're just asking him to
15 read the document.

16 MS. KUJACA: I am.

17 THE COURT: Anybody can do that, to
18 the extent it can be done. It's pretty hard to read.

19 MR. JORDAN: That was a document that
20 originally we offered you yesterday, Your Honor. You
21 indicated that it said -- we agreed it said
22 October 2nd.

23 THE COURT: Well, it says -- it's
24 typed 10-2-2006 down here. What I'm showing on the
25 screen now reflects that.

1 MR. JORDAN: Right.

2 BY MS. KUJACA:

3 Q Do you know what document or documents were
4 sent via this certified mail?

5 A Can I see the whole thing?

6 THE COURT: I am trying to get a
7 different tool.

8 THE WITNESS: That's good.

9 BY MS. KUJACA:

10 Q Is there any indication on this receipt
11 what documents were sent?

12 A No, there is not.

13 Q Do you know for certain that this was a
14 renewal application for a CAAPP permit?

15 A No, I do not.

16 Q This certified receipt has numbers written
17 over typed entries; is that correct?

18 A Yes. For the amount of postage and
19 certified fee and return receipt, there appears to be
20 handwritten numbers over typewritten numbers.

21 Q Do you know why that is?

22 A No, I do not.

23 MS. KUJACA: If we could scroll to the
24 next page, Your Honor.

25 THE COURT: It's only one page. Did

1 you want the other exhibit?

2 MS. KUJACA: Oh, then it would be
3 number 70. Yes, please.

4 BY MS. KUJACA:

5 Q This is the certified mail return card, is
6 it not, to your knowledge?

7 A Yes. To the best of my knowledge, this
8 would appear to be what we call a green card.

9 Q Okay. Who signed the receipt on behalf of
10 the IEPA?

11 A There is no signature on this card.

12 Q Do you even know that this certified mail
13 was received by your office?

14 A No, I do not.

15 Q As of now does the IEPA deem this renewal
16 application untimely?

17 A Yes. The permit section has deemed the
18 application to be untimely.

19 Q What is the effect of that?

20 A The effect of that is the application
21 shield does not exist, and since the expiration date
22 on the permit has passed, the permit has also
23 expired.

24 THE COURT: Well, Mr. Reed, going back
25 to what you said earlier, a notice of violation would

1 be issued here?

2 THE WITNESS: Yes. That's not my
3 decision to issue --

4 THE COURT: I understand, but that's
5 what would happen in the ordinary course?

6 THE WITNESS: That's correct.

7 THE COURT: And at that point the
8 applicant would be able to present evidence that the
9 application was in fact submitted in a timely
10 fashion?

11 THE WITNESS: Yes. That's correct.

12 THE COURT: And if there were proof
13 presented satisfactory to the legal department that
14 the application was timely, the application shield
15 would be retroactively --

16 THE WITNESS: Yes. That is correct.

17 THE COURT: -- replaced.

18 MS. KUJACA: Okay. Given your
19 understanding of that matter, I suppose I don't need
20 to introduce the violation notice regarding the --

21 THE COURT: No.

22 MS. KUJACA: Okay. Thank you, Your
23 Honor.

24 Going back to Exhibit Peoria 21, if we
25 could. If we could go to page IIT Peoria No. 1024.

1 THE COURT: You don't know what page
2 that is of the exhibit?

3 MS. KUJACA: They are Bates stamped.

4 THE COURT: No, but if you could tell
5 me which one of the 134 pages, it would be easier for
6 me to get it than scrolling through until I find that
7 one.

8 MS. KUJACA: It looks like 21.

9 BY MS. KUJACA:

10 Q Mr. Reed, who signed this permit renewal
11 application?

12 A The signature in the signature block is
13 Harry Henderson, not individually, but solely as
14 receiver.

15 Q Who is this?

16 A I don't know.

17 Q Who would have been permit -- who would
18 have been expected to sign the permit renewal
19 application?

20 A That would have been the responsible
21 official designated on the permit.

22 Q And that was John Connolly?

23 A Yes.

24 Q Presuming all other items to be correct and
25 timely, can the IEPA accept the RTC permit renewal

1 application with this signature?

2 A No, we cannot.

3 Q Why not?

4 A Because the responsible official designated
5 that has the authority to request the permit be
6 renewed or modified is not the same on this
7 application.

8 Q Are you aware in your duties with IEPA of
9 any orders issued by the Circuit Court of Cook County
10 regarding whether Harry Henderson can sign this
11 renewal on behalf of RTC?

12 A No, I am not.

13 Q Are you aware of any orders issued by the
14 Circuit Court of Cook County regarding whether Harry
15 Henderson can sign this renewal on behalf of IIT?

16 A No, I am not.

17 Q Was the IEPA permit section given notice of
18 any orders regarding whether Harry Henderson can sign
19 or submit a renewal application?

20 A No, we have not.

21 Q Are you aware of any documents in your
22 files regarding whether the IEPA is required to
23 accept the signature of Harry Henderson as an
24 authorized person on behalf of RTC?

25 A No, I am not. Any request, any change in

1 the responsible official requires a modification to
2 the permit, and we don't have any intervening request
3 to modify the permit.

4 Q Who would make that determination whether
5 Harry Henderson is a valid authorized person?

6 A The permit section makes that determination
7 by comparing who was identified on the initial or
8 most previous current permit as the responsible
9 official to the person submitting the application.

10 Q Has that determination been made?

11 A Yes.

12 Q What is that determination?

13 A This is not the same responsible official
14 as identified on the existing permit.

15 MS. KUJACA: You're going to make me
16 count pages again. I want to go to Bates stamp page
17 1022. It looks like maybe another additional 20
18 pages in, Your Honor. If you can scroll down, I can
19 see the Bates stamp. I want 1022 -- so let's go back
20 -- wait. That doesn't make any sense. That's it.

21 BY MS. KUJACA:

22 Q Are there any issues regarding the permit
23 renewal application on its face? For example, on
24 this page there is a variety of check boxes.

25 MR. JORDAN: You know, I object, Your

1 Honor. Now what we are doing is we are getting into
2 substantive testimony regarding the permit that, as
3 we indicated in our motion, granted they haven't even
4 started reviewing yet.

5 MS. KUJACA: These are additional
6 items why this permit is not --

7 THE COURT: The objection is
8 overruled.

9 MR. JORDAN: I thought the reason for
10 rebuttal was timeliness, Your Honor.

11 THE COURT: No, it's validity. The
12 question was whether there is currently a permit or
13 permit shield, or as has been explained now, an
14 application shield in place. And to the extent that
15 there is not one, that is relevant.

16 But I would have to say, though, Ms.
17 Kujaca, whether or not the permit is going to
18 ultimately be approved probably is not relevant to
19 the question of whether there is a permit shield or
20 application shield in place now, is it?

21 MS. KUJACA: I can ask him the final
22 question.

23 THE COURT: I guess that is a question
24 for Mr. Reed. The ultimate determination of the
25 merits of an application does not impact the question

1 of whether an application shield is in place, does
2 it?

3 THE WITNESS: No, it does not.

4 MS. KUJACA: Okay.

5 THE COURT: Then I'll sustain the
6 objection.

7 MS. KUJACA: Okay.

8 BY MS. KUJACA:

9 Q Will a permit be considered if the site is
10 not put into compliance?

11 THE COURT: I think we've already
12 gotten an answer to that question.

13 MS. KUJACA: Okay.

14 BY MS. KUJACA:

15 Q Presuming that everything was timely and
16 filed and the renewal had been accepted from your
17 office, how long would it take RTC to get a renewal
18 permit to operate?

19 A We are generally operating on a
20 three-to-five year time period.

21 THE COURT: Both for initial
22 applications and for reviews -- renewals?

23 THE WITNESS: Yes, sir.

24 THE COURT: Okay.

25 BY MS. KUJACA:

1 Q So what is the current status of RTC's
2 CAAPP permit?

3 A As it stands right now today, the permit
4 has expired.

5 Q Is IIT authorized -- excused.

6 Is RTC authorized by the IEPA to
7 operate a gas to energy conversion system at the
8 Peoria Landfill?

9 A No, it would not be authorized at this
10 time.

11 Q What are the ramifications of operating
12 without a permit from your office?

13 A The ramifications would be that the source
14 could be cited for a violation for operating without
15 the appropriate construction and operating permits.

16 Q Could Peoria be fined?

17 A Yes, the landfill could also be fined
18 because they are considered a single source.

19 Q How high can those fines go?

20 A Those numbers are identified in the act. I
21 don't know what they are off the top of my head.

22 MS. KUJACA: I have no further
23 questions.

24 THE COURT: Do you have any questions,
25 Mr. Bohan?

1 MR. BOHAN: Your Honor, I had only one
2 and that was the witness referred to --

3 MR. JORDAN: You know what, Your
4 Honor, we object. They're not a party to the Peoria
5 proceedings and so they --

6 THE COURT: They listed him as a
7 witness. The question that we addressed earlier with
8 your stipulation obviated the need to ask any
9 questions. If Mr. Bohan has come to the conclusion
10 that there is still a question that he wants to ask
11 Mr. Reed within the scope of the subject matter that
12 he had identified, I'm going to let him do it.

13 The stipulation, I really appreciate,
14 saves time. But you can't -- you can't foreclose
15 questioning of the witness by tendering a stipulation
16 if there is another fact that he wants to ask him
17 about. Again, if it's within the scope of what was
18 identified.

19 MR. JORDAN: If it relates to the
20 Allied/Springfield permit or the Peoria?

21 THE COURT: Well, we'll find out. If
22 you have another basis for objection after the
23 question is asked, that's fine. But your objection
24 based on the fact that you entered into that
25 stipulation I'll overrule.

CROSS-EXAMINATION

BY MR. BOHAN:

Q Mr. Reed, I just have a couple of questions.

You testified, you used the words in your answer either first round or first go round in the context of renewal applications. Do you remember that?

A Yes.

Q This is our first round or this is our first go around. I can't remember which words you used, but would you explain what you meant by that first round of renewal applications.

A Yes. We issue an initial permit to a source. The term of that permit is five years. At five years that permit would expire. This is the first renewal application that we are receiving from all the sources that are CAAPP sources in Illinois.

MR. JORDAN: All right. Now we move to strike that since there is no renewal in question as to Allied.

THE COURT: Well, you know what, all that Mr. Bohan did here, Mr. Jordan, was clarify something that was something I thought was quite implicit in the earlier testimony. I understood the

1 first round to indicate that this was the first time
2 that renewal applications were coming in on a bunch
3 of or a batch of applications that had initially been
4 approved by the agency. So I don't -- there is
5 nothing to strike here. That's a clarification that
6 may not even have been necessary.

7 MR. BOHAN: All right. I have one
8 other question.

9 BY MR. BOHAN:

10 Q In reviewing a permit application as a
11 member of the permit section, does IEPA consider the
12 permit applicant's history of regulatory compliance
13 or noncompliance?

14 MR. JORDAN: Again, Your Honor --

15 THE COURT: Is that within the scope
16 of your examination?

17 MR. BOHAN: Yes, it is.

18 MR. JORDAN: It's in rebuttal to
19 nothing, Your Honor.

20 THE COURT: No, no, it doesn't need to
21 be rebuttal. In contrast to Peoria, my understanding
22 is that Allied had identified Mr. --

23 MR. JORDAN: No, just opposite.
24 Peoria --

25 MR. BOHAN: No, Your Honor, we --

1 MR. JORDAN: Peoria identified
2 Mr. Reed and Mr. Bohan did not, which is why you
3 granted our motion.

4 THE COURT: All right. I had it
5 backwards then.

6 MR. BOHAN: Your Honor, may I address
7 that? We didn't identify Mr. Reed on our witness
8 list. We identified, however -- not by name. We
9 identified all witnesses that were being identified
10 by the City of Peoria not -- we did not identify him
11 by name. But we did specifically reserve our right
12 to call as witnesses all witnesses identified by
13 Peoria.

14 MR. JORDAN: And there were no --

15 THE COURT: All right. If your
16 question -- if your question is whether there is a
17 need to clear up notices of violation before a permit
18 is issued, is that essentially your question?

19 MR. BOHAN: No, Your Honor. My
20 question is simply in reviewing a permit application,
21 does the IEPA consider the permit applicant's history
22 of environmental regulatory compliance or
23 noncompliance.

24 MR. JORDAN: That's in rebuttal to
25 nothing, Your Honor.

1 THE COURT: All right. I granted a
2 motion in limine. I just signed an order granting
3 that motion in limine. It appears to me that the
4 motion in limine was directed against your effort to
5 ask Mr. Reed questions that were beyond rebuttal.
6 And if you're asking me now to reconsider that
7 ruling, I guess I can ask -- I can address that. But
8 otherwise I'm going to enforce the order that I just
9 entered. And if this is not rebuttal, I am going to
10 deny your request to ask that question.

11 MR. BOHAN: I haven't read Your
12 Honor's order, but this is -- this directly rebuts
13 Mr. Connolly's testimony at length that the matter of
14 obtaining the necessary permit approvals from IEPA
15 was purely ministerial. In fact, it is their burden,
16 as we've said in our opening statement, Your Honor,
17 to prove that IIT can provide adequate assurance of
18 future performance.

19 My offer of proof would be that this
20 witness would testify that in fact the employees of
21 IIT, their prior history of regulatory noncompliance
22 is indeed a factor that IEPA not only can but must
23 consider in determining whether or not to issue an
24 application.

25 MR. JORDAN: First off, Your Honor --

1 MR. BOHAN: To issue a permit.

2 MR. JORDAN: I'm sorry. I keep
3 thinking Mr. Bohan is finished. I apologize. Mr.
4 Connolly didn't say that a CAAPP permit is
5 ministerial. You know, it's a three-to-five year
6 process is what he said. I don't think that -- I
7 think we are -- that is not at all what is intended
8 or meant by Mr. Connolly's testimony. It can't be
9 when he says it's a three-to-five year process that
10 it's just a ministerial thing.

11 THE COURT: The notes I have reflect
12 that Mr. Connolly testified that RTC has a permit now
13 and that transferring that permit to IIT would be a
14 ministerial matter.

15 MR. JORDAN: Right. But we've already
16 determined we are not transferring the permit at
17 Springfield. We have to apply for a new permit. So
18 this -- we are talking apples and oranges.

19 THE COURT: Well, if there's no -- all
20 right. I will take that. But realize that it's your
21 burden of proof to establish the ability of IIT to
22 obtain a permit. And if you don't meet that burden
23 of proof, I'm going to have to find that you haven't
24 satisfied a fairly essential element in your ability
25 to provide adequate assurance of future performance.

1 MR. JORDAN: Actually, Your Honor, I
2 don't know why I would possibly need to do that
3 because there is no one who could possibly determine
4 that for three to five years. Even Allied couldn't
5 show that they could do that. All we need to do is
6 show that we have the ability to do it. And that's a
7 different thing. But that doesn't rebut -- none of
8 this rebuts Mr. Connolly's testimony.

9 THE COURT: If Mr. Connolly did not
10 testify that it was likely that IIT would be able to
11 obtain a permit here, then he -- then I would like to
12 know how you have satisfied your burden of showing
13 that IIT will be able to perform under the agreements
14 that you're seeking to assume.

15 MR. JORDAN: You're right. I
16 misstated. But this question here is rebuttal to
17 nothing Mr. Connolly said.

18 THE COURT: All right. Well, the
19 point I'm trying to make is that if there's nothing
20 Mr. Connolly said that this would rebut, I believe
21 IIT will have failed to establish that it can
22 adequate -- that it can provide adequate assurance.

23 MR. JORDAN: The question of whether
24 they can review the compliance history or not?

25 THE COURT: I believe -- now, let me

1 put this in a technically correct fashion -- that the
2 trustee will have to establish that IIT is likely to
3 be able to obtain a valid CAAPP.

4 And if that cannot be done or has not
5 been done, then the trustee will have failed to
6 establish that IIT can provide adequate assurance of
7 performance under the contracts sought to be assumed
8 here since those contracts require the counter-party
9 to Peoria and Allied to be able to obtain all
10 necessary permits.

11 MR. JORDAN: We can show a likelihood,
12 but we can't provide a guarantee.

13 THE COURT: Of course. But what I'm
14 telling you is that unless Mr. Connolly gave
15 testimony that would establish that likelihood --

16 MR. JORDAN: Which he did.

17 THE COURT: Well, then --

18 MR. JORDAN: In my view.

19 THE COURT: -- then if Mr. Bohan wants
20 to obtain testimony from Mr. Reed that calls that
21 likelihood into question, it's entirely appropriate
22 by way of rebuttal. The objection is overruled.

23 MS. KUJACA: Your Honor, given that, I
24 was prevented from going down this line of
25 questioning as well as to whether IIT submitting

1 administrative --

2 THE COURT: Yes, and that was due to
3 my misunderstanding. I thought that the motion in
4 limine was directed toward you. And I have just been
5 disabused of that mistake. So if you want to resume
6 your testimony on that, I'll let you do that after
7 Mr. Bohan finishes.

8 MS. KUJACA: Thank you.

9 MR. BOHAN: Do you remember my
10 question?

11 THE WITNESS: No, if you could repeat
12 it, please.

13 BY MR. BOHAN:

14 Q In reviewing a CAAPP permit application,
15 does IEPA consider the applicant's history of
16 regulatory compliance or noncompliance?

17 A Yes, we do.

18 Q All right. And how does the applicant's
19 regulatory history enter into the determination by
20 IEPA whether to grant or deny a permit application?

21 A One of the factors, the requirements in
22 this particular instance is under Section 39(i) of
23 the Environmental Protection Act, which requires us
24 to review any past compliance capabilities of the
25 source in regards to the entities that own it, as

1 well as any employees that work for those entities or
2 have worked for those entities.

3 MR. BOHAN: No other questions, Your
4 Honor.

5 MS. KUJACA: I will be brief, Your
6 Honor. Thank you.

7 FURTHER DIRECT EXAMINATION

8 BY MS. KUJACA:

9 Q Does IIT currently have any permits with
10 your office?

11 A No. IIT -- well, excuse me. IIT currently
12 has --

13 Q I'm sorry. Let me clarify. In relation to
14 the Peoria site.

15 A In relation to the Peoria site, no, they do
16 not.

17 Q What would have to happen for IIT to -- for
18 RTC to transfer the name of the permit from RTC to
19 IIT? What would have to happen?

20 A Well, first, we would have to have a timely
21 application. We would have to resolve that issue.
22 And then there would have to be a significant
23 modification come in requesting that name change.
24 That significant modification would have to contain
25 an approvable compliance schedule to demonstrate that

1 the source would come back into compliance within a
2 certain time period, as well as any other
3 deficiencies that an engineer may note during his --
4 the pendency of his review.

5 Q So it would not be as simple as an
6 administrative name change; is that correct?

7 A Yes. That's correct.

8 Q The underlying source would have to be in
9 compliance?

10 A Yes. We have a requirement that before we
11 can issue any permits to a source they have to be in
12 compliance or there has to be an approvable
13 compliance plan demonstrating that they can come back
14 into compliance.

15 MS. KUJACA: Thank you.

16 THE COURT: Before there is any
17 further questioning of this witness, what I would
18 like to do is ask Mr. Reed, this may be obvious, but
19 if a permit is issued to one entity, would another
20 entity with a similar name be able to operate under
21 that permit?

22 THE WITNESS: No, they would not.

23 THE COURT: So if there is a change in
24 legal entity, even though the name is similar, there
25 would have to be some kind of modification?

1 THE WITNESS: Yes. That is correct.

2 THE COURT: Okay.

3 MS. KUJACA: Thank you, Your Honor.

4 THE COURT: Go ahead, Mr. Jordan.

5 CROSS-EXAMINATION

6 BY MR. JORDAN:

7 Q Good afternoon, Mr. Reed. I just want to
8 clarify a few things.

9 It's my understanding from your
10 testimony that if the applicant could demonstrate a
11 CAAPP renewal permit was in fact -- was physically in
12 the mail on the date, it would be deemed timely even
13 if received after that date, correct?

14 A Yes. That is correct.

15 Q Okay. So that determination has not been
16 made here; is that correct?

17 A The permit section has made a
18 determination. The legal determination based on any
19 evidence tendered has not been made.

20 Q Right, because they haven't requested the
21 evidence yet?

22 A That's correct.

23 Q And if the evidence provided that, then it
24 could be deemed timely?

25 A Yes. That is correct.

1 Q Okay. And the evidence would be that
2 someone could provide testimony or documents --

3 THE COURT: I think I have all I need
4 on this particular point, Mr. Jordan.

5 MR. JORDAN: That's fine.

6 BY MR. JORDAN:

7 Q Now, with regard to your comments with
8 regard to Mr. Henderson, I think you indicated that
9 because the state didn't have notice before the
10 filing of the application, that there was some
11 problem with Mr. Henderson signing the application?

12 A Yes, that would be a significant flaw to
13 the application.

14 Q Okay. But if, in fact, Mr. Henderson was
15 authorized by a court in the state of Illinois, has
16 the determination been made that that is insufficient
17 for the Illinois Environmental Protection Agency?

18 A No, that determination has not. Any court
19 orders stating anything of that nature would have to
20 go to our division of legal counsel for review.

21 Q Okay. And a factor weighing in favor of
22 that would be that the Illinois Environmental
23 Protection Agency was given a copy of that order
24 prior to the filing of the renewal application,
25 correct?

1 A Could you repeat that one more time.

2 Q A factor weighing in favor of determining
3 that it was an appropriate renewal application would
4 be that the copy of the court order was provided to
5 the IEPA prior to the submission of the renewal
6 application, correct?

7 A Yes, if that is the case.

8 Q Okay. Can you look at our Exhibit 16,
9 please.

10 THE COURT: IIT Exhibit 16?

11 MR. JORDAN: That's correct.

12 THE COURT: Okay.

13 BY MR. JORDAN:

14 Q I'm sorry. Peoria Exhibit 16. I had the
15 binder in front of me and I should have looked at the
16 color.

17 Now, looking at the first page and the
18 first paragraph there, first off, who is Jasmine
19 Kepner, do you know?

20 A Yes, I do know Jasmine.

21 Q Jasmine. She is with the Environmental
22 Protection -- Illinois Environmental Protection
23 Agency, correct?

24 A Yes. She currently works in the compliance
25 unit.

1 Q Okay. And she offices -- she accepts mail
2 at the address listed here?

3 A Yes. That's correct.

4 Q Okay. And this is a letter indicating
5 that, Mr. Henderson is -- indicating that there is a
6 court order entered authorizing to, and among other
7 things, to file applications, correct?

8 A Yes. It does state that a court order was
9 entered.

10 Q Okay. In fact, attached at what I would
11 perceive to be probably page six would be a copy of a
12 court order that was entered authorizing Mr.
13 Henderson to submit the application, correct?

14 A I would have to read it to see if it says
15 that he is allowed to submit the application.

16 Q Okay. I think that's more a matter for
17 argument. This would have been an item that was
18 attached to a letter. That's fine. We will move on.

19 Now, it is my understanding that based
20 upon your -- what we talked about last week, that
21 right now it's premature to say whether the permit
22 application is going to be approved or denied, the
23 permit renewal application is going to be approved or
24 denied?

25 A Yes. That's correct. We have not entered

1 into our full review of this application at this
2 time.

3 Q Okay. And with regard to any commitment or
4 compliance issues, what happens is that a letter goes
5 out from the IEPA to the applicant and the applicant
6 submits documents to meet the requirement, the four
7 corners of the requirements for compliance that the
8 IEPA sets forth, right?

9 A Yes. We have authority to request
10 additional information. We can do that in one of
11 three ways. We can do that through a phone call or
12 an e-mail. We can do that through what we call a
13 request for additional information letter or we can
14 also do that through a notice of intent to deny
15 letter.

16 Q Okay. And, in fact, the IEPA would spell
17 out exactly what it wants in terms of a compliance
18 request?

19 A Yes. That is correct. We would be
20 specific in what is required.

21 Q Okay. And then you have seen many
22 instances in which either one of those three things
23 happened and people submit the compliance information
24 and the application goes through, correct?

25 A Yes. That is correct.

1 Q Okay. So you have no reason to believe as
2 we sit here today that a compliance commitment
3 agreement can't be -- or compliance portion of the
4 permit cannot be provided, correct?

5 A Are you asking in regards to whether a
6 compliance schedule could be --

7 Q Right.

8 A I could not answer that question at this
9 time because, yes, we have not seen any response from
10 the applicant.

11 Q Right, because in --

12 A Nor have we requested anything from the
13 applicant.

14 Q Right. And there is about 150 applications
15 in front this one anyway, right?

16 A Yes. That is correct.

17 Q And you indicated that there was some level
18 of heightened scrutiny relating to compliance
19 history; is that correct?

20 A Yes. That's correct.

21 Q And the additional item that that puts in
22 is a public hearing, chiefly a public hearing; isn't
23 that right?

24 A Are you referring to the process of when we
25 go out to public notice with the permit?

1 Q Right.

2 A Yes. Anybody, any interested party can
3 request a public hearing or the agency can actually
4 hold a hearing on its own behalf if we deem there to
5 be a significant public interest.

6 Q Right. And, for instance, the site, the
7 Allied site, was transferred -- the ownership change
8 or ownership name, whatever you referred to, and I
9 know I'm going to get it wrong, transferred from USG
10 Watts to Allied while there was an over-height and
11 over-girth notice of violation out at the time,
12 right?

13 A Yes. Yes, that's my understanding that
14 there was a land violation regarding over-height.

15 Q And that wasn't any impediment to the
16 approval of that transfer, correct?

17 A Are you asking in regards to the land
18 permits? I couldn't answer that. I don't know
19 anything about the land permit process.

20 Q That's fine.

21 Now, when we talked about the granting
22 of permits, likely granting of permits, isn't it a
23 fact that Section 39 of the act, which is I think
24 applicable, indicates that in making its
25 determination on permit applications under this

1 section, the agency may consider prior adjudications
2 of noncompliance with this act by the applicant that
3 involved the release of contaminant into the
4 environment, correct?

5 A I would need to see where you're reading
6 from in order to answer that.

7 MR. JORDAN: May I approach, Your
8 Honor?

9 THE COURT: Well, you're talking about
10 a provision of an Illinois statute.

11 MR. JORDAN: 415 ILCS 5/39. We can
12 save this for argument, Your Honor.

13 THE COURT: Okay.

14 BY MR. JORDAN:

15 Q There has not been an adjudication of
16 noncompliance against RTC, has there been?

17 A To my knowledge there has not been anything
18 adjudicated at this time.

19 Q And there has not been an adjudication of
20 noncompliance against any employee of RTC, has there
21 been?

22 A I am not really sure how to answer that
23 question.

24 Q You don't know of any adjudication of
25 noncompliance against any employee of RTC?

1 A The only thing I know of is --

2 Q I'm asking for adjudications.

3 A Not to my knowledge, no.

4 Q Okay. Now, a permit holder could employ
5 third parties to operate -- all right. I'm sorry.

6 The responsible officer under a permit
7 could employ third parties to operate at a landfill
8 site, couldn't they?

9 A I'm not sure I am following your question.

10 Q John Connolly is the responsible officer on
11 the Peoria permit, correct?

12 A Yes. That's correct.

13 Q And he could employ anybody, whether it was
14 employees of Resource Technology Corporation or
15 Resource Technology Corporation of South Dakota or
16 Altorfer to work under that permit, couldn't he?

17 A You mean to physically do work?

18 Q Right.

19 A Yes, he can allow anybody.

20 Q Okay. And there is no requirement that he
21 employ people from Resource Technology to do work on
22 that site, is there?

23 A No, there is not.

24 MR. JORDAN: We'll withdraw our
25 objection to Peoria Exhibit 16. No more questions.

1 THE COURT: Redirect?

2 REDIRECT EXAMINATION

3 BY MS. KUJACA:

4 Q I just have one quick question, Mr. Reed.
5 Putting all hypotheticals aside, what today as we sit
6 here is the current status of the RTC CAAPP permit
7 for the Peoria facility?

8 A The current status as of today is that the
9 permit has expired.

10 MS. KUJACA: Thank you.

11 THE COURT: Do you have anything else,
12 Mr. Bohan.

13 MR. BOHAN: No, Your Honor.

14 THE COURT: You may step down,
15 Mr. Reed. Thank you.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 MS. KUJACA: Any other witnesses?

19 MR. BOHAN: Your Honor, we had one
20 other witness, but actually we've decided not to call
21 him. So...

22 THE COURT: Okay. Fine.

23 MS. KUJACA: No. We're finished.

24 THE COURT: Okay. Fine. Did you have
25 any rebuttal, Mr. Jordan?

1 MR. JORDAN: Yes. We call John
2 Connolly.

3 THE COURT: Mr. Connolly, you're still
4 under oath.

5 JOHN CONNOLLY, WITNESS, PREVIOUSLY SWORN

6 DIRECT EXAMINATION

7 BY MR. JORDAN:

8 Q Mr. Connolly, can you tell me when the
9 application, renewal application for the Peoria
10 Landfill CAAPP permit was mailed?

11 A It was mailed certified mail October 2nd,
12 2006, sometime midday, probably around lunch time.

13 Q Do you know when the time and date that it
14 needed to be filed was?

15 A Well, the regulation states timeliness is
16 4:30 p.m. that day that it's due.

17 Q Okay. So it was posted prior to the date
18 and time it was due?

19 A Yes.

20 Q How it what posted?

21 A It was posted certified mail at the U.S.
22 Post Office.

23 Q Okay. And was a green card returned?

24 A Oh, sure. It's certified mail, return
25 receipt requested.

1 Q And how could one determine that it was
2 actually received? Would they go on the --

3 A Oh, sure.

4 Q What could they do?

5 A Well, you could look at the receipt itself.
6 You can look at that 20 digit number that's on the
7 receipt and they match up the receipt and the green
8 card. Those numbers match up. You can go on line
9 with the United States Post Office and verify it.

10 Q Is that www.USPS.gov?

11 A I believe so, yeah.

12 Q And you could look on there and determine
13 it was actually delivered, when it was delivered?

14 A Right.

15 MR. JORDAN: All right. No further
16 questions.

17 THE COURT: You may step down, Mr.
18 Connolly.

19 (Witness excused.)

20 THE COURT: All right. What is your
21 preference regarding argument? If you are ready to
22 argue now, I will take a five-minute recess and come
23 back and hear your argument.

24 MR. BOHAN: In what order would you
25 like us to argue, Your Honor?

1 THE COURT: As we have indicated, Mr.
2 Jordan has the burden of proof, so he and Mr. Schmidt
3 should go first. You should respond, and he'll have
4 an opportunity to rebut.

5 MR. BOHAN: Thank you.

6 THE COURT: Okay.

7 (Brief Recess.)

8 THE CLERK: Court is reconvened.

9 THE COURT: Mr. Jordan, before you
10 begin, it would be helpful to me if you could address
11 three main issues. Number one, the likelihood that
12 the \$3 million set out in the loan agreement and
13 promissory note would actually be received by IIT;
14 secondly, the likelihood that that amount of money
15 will be sufficient to assure compliance with the
16 agreement sought to be assumed and assigned; and
17 third, the likelihood that the individuals who would
18 be running IIT would be able to comply with those
19 obligations imposed by those agreements.

20 And again, I would think that in order
21 to provide the adequate assurance of future
22 performance required here each one of those three
23 things would have to be shown to be likely.

24 MR. JORDAN: All right. Thank you,
25 Your Honor.

1 With all due respect to the court,
2 before I proceed I need to talk a little bit about
3 this whole trust business or trust issue, because
4 with again all due respect, Your Honor is not
5 correct. Business trust is a part of Section 101(9)
6 under corporations.

7 THE COURT: What's a business trust?

8 MR. JORDAN: A business trust is a
9 trust that has been formed for the purpose of
10 conducting an ongoing activity as opposed to
11 maintaining a res -- or not formed, but operates.
12 This business -- this operates as a business. And so
13 under Section 303 of the Bankruptcy Code it could
14 be --

15 THE COURT: What provision of Illinois
16 law creates an entity known as a business trust
17 that's separate from a common law trust?

18 MR. JORDAN: It's just -- no, there is
19 -- a common law trust actually is a term that is used
20 for what are really schemes, with the concept somehow
21 of common law trust is that it -- it diverts
22 liability.

23 Illinois state trust law provides for
24 the -- for trusts, and the bankruptcy law provides
25 that a trust that's formed for operation of a -- not

1 formed for the operation of business, but operates an
2 ongoing business, is considered under the bankruptcy
3 a business trust, and, therefore, would be
4 susceptible to an involuntary bankruptcy.

5 And the state law would provide that
6 -- and there is a citation -- pardon me. I have to
7 come over and look at it on my screen. I believe I
8 have it up here. That state law provides that it may
9 -- the trustee -- the trust is sued through suing the
10 trustee. And that's the normal and acceptable manner
11 allowed under the Illinois state law. And the term
12 business trust is in 101(9).

13 THE COURT: Hold on just a second.

14 All right. You wanted to give me a
15 citation?

16 MR. JORDAN: To -- I would, except
17 that I can't get Internet connectivity right now. I
18 have three cases and -- or two cases -- three cases,
19 if you count like a 1905 or whatever case I have -- I
20 can -- see if I can -- I don't know whether I can
21 bring them on my -- I doubt it because I think they
22 were internal references that were sent to me.

23 But as far as those cases, Your
24 Honor -- the Illinois Trust & Trustee Act is at 760
25 ILCS 5/1, which allows a person to establish a trust

1 specifically. And 760 ILCS 5/3 gives powers to the
2 trustee to prosecute claims.

3 THE COURT: All right. The question
4 here is dealt with at length in the case of *in re Old*
5 *Second National Bank of Aurora*, 7 B.R. 37, a
6 bankruptcy court decision from 1980. And it draws
7 the distinction between trusts and business trusts
8 and states that business trusts are created for the
9 purpose of carrying on some kind of business or
10 commercial activity for profit.

11 The object of a nonbusiness trust is
12 to protect and preserve the trust res. It is the
13 business trust's similarity to a corporation that
14 permits it to be a debtor in bankruptcy. *In re*
15 *Treasure Island Land Trust*, 5 BCD 1246 at 1247, 2
16 B.R. 332.

17 Then the *Old Second National Bank* case
18 goes on to say, "An examination of the trust
19 agreement convinces the court that it's not a
20 business trust. *Old Second* has not sold securities,
21 has no trade creditors, does not carry on business
22 under a distinct name. There is no board of
23 trustees, the trustee has no management power without
24 written consent of the beneficiary, there are no
25 certificates of participation. The primary purpose

1 of the trust is merely to hold title to property."

2 Now, what we would have to do in
3 applying that kind of rationale to this trust
4 agreement is determine if this is more like a
5 corporation or more like a trust.

6 MR. JORDAN: I don't think there's any
7 real question, Your Honor, that this trust is
8 operating, holding itself out -- is not operating to
9 just protect the res, but is in fact conducting a
10 business activity and would be a business trust. And
11 even in that event, we have the testimony of Mr.
12 Greenblatt, who is the sole director and officer of
13 Chiplease, Inc., and the majority control of
14 Scattered Corporation, indicated that if the court
15 required it, the assets would be transferred into
16 Illinois Investment Trust Corporation, which I would
17 note is available under the Secretary of State's
18 website. So we could make that a condition.

19 And I would also note that Allied and
20 Peoria could not complain to that because each of the
21 leases which are in evidence are freely assignable.
22 And it is not proper under 365 to put additional
23 conditions of that sort on the proposed assignee to
24 write terms into an agreement that the original
25 parties did not bargain for.

1 THE COURT: I have not read every word
2 of the powers of the trustee set forth in Section 6.1
3 of this agreement, but I see nothing here allowing
4 the trustee to operate a business in the name of the
5 trust. And to the contrary, I see a provision that
6 allows the trustee to purchase, acquire or retain a
7 business interest as shareholder, security holder,
8 creditor, partner, proprietor or otherwise. I guess
9 maybe that does it. He's a proprietor. Perhaps he
10 can operate a business that way.

11 MR. JORDAN: In addition, Section 12
12 allows him to execute contracts and enter into
13 agreements.

14 THE COURT: But, boy, this certainly
15 looks much more like an ordinary trust than it does a
16 business trust. It is not titled business trust, and
17 there is nothing in here that anticipates the
18 carrying on of a business in the name of the trust.
19 It gives the trustee broad authority to create a res
20 to -- to administer a res.

21 I would have to say, Mr. Jordan, that
22 the question of whether this agreement is a business
23 trust as opposed to an ordinary trust is certainly
24 one that's not free from doubt.

25 MR. JORDAN: Well, I respectfully

1 disagree, but that's fine.

2 Now, you indicated --

3 THE COURT: What business does this
4 business, this alleged business trust, purport to
5 carry out? Anything the trustee wants?

6 MR. JORDAN: You know, Your Honor, we
7 were here for two days. The trust -- the trustee
8 testified that -- the exact business that they are
9 going to enter into. Now, what I think you are doing
10 is you're making a finding --

11 THE COURT: No, I am not asking you
12 what they said they are going to do. I know what
13 they are going to do, what they propose to do. The
14 concern I raised with you earlier today was whether
15 this agreement is one that would make the trust as an
16 entity amenable to suit and amenable to an
17 involuntary bankruptcy proceeding if that were
18 required.

19 And to the extent that it's not a
20 business trust with the gloss put on it by the in re
21 Old Second National Bank case or other authority to
22 the same effect, it would not be amenable to an
23 involuntary bankruptcy proceeding, which might bear
24 importantly on the question of whether that
25 \$3 million would ultimately be received, because

1 there might not be an opportunity for the
2 counter-parties to the agreement to bring the trust
3 into an involuntary bankruptcy proceeding in the
4 event that the trustee declined to enforce whatever
5 contract rights that trust had.

6 MR. JORDAN: I can't conjecture as to
7 what's going to happen in the future.

8 THE COURT: Let me just put the
9 question to you this way: Let us assume that
10 Scattered and Chiplease decline to honor their loan
11 agreement, and the trustee, since Scattered and
12 Chiplease are beneficiaries of the trust, declines to
13 sue them under the loan agreement, even if he had the
14 capacity to sue. I guess as trustee he would. But
15 what would then the options of the counter-parties
16 be?

17 They can't -- they can't force -- act
18 as -- bring some kind of derivative action on in the
19 name of this trust against the parties with whom the
20 trustee has executed a contract.

21 MR. JORDAN: Actually, based upon the
22 testimony of Mr. Jahelka and Mr. Greenblatt, they
23 could make a very strong argument and a winning
24 argument that these loan agreements are not created
25 for the benefit or -- the only benefit of the

1 trustee.

2 And, in fact, since they were created
3 to show that the trust had the ability to operate
4 and, therefore -- and perform its duties, and
5 therefore, allow for the assumption and assignment of
6 the contracts, that they are an intended third-party
7 beneficiary of that contract, and so they would have
8 a direct right to go and sue Scattered, and they
9 would have a direct right to go and sue Chiplease,
10 because it is clear from their own testimony from
11 their own mouths that these people over here are
12 intended third-party beneficiaries of that contract.

13 And I don't know how they could ever
14 get around that, because they sat there and they
15 raised their right hand and they said we're going to
16 do this. And these people fought vigorously. And
17 then it turns out they are not going to fund? They
18 have damage there and I think --

19 THE COURT: Okay. Then what do they
20 do if at the time they might want to sue there are no
21 assets in Scattered or Chiplease?

22 MR. JORDAN: Well, you know, if we had
23 a -- if we had had a loan commitment from Citicorp
24 and it had another quarter where it lost the kind of
25 money that it lost last quarter, the ten billion or

1 so, and then it had another quarter like that, at
2 some point Citicorp could fail.

3 But what we have today is we have an
4 active corporation which is Scattered Corporation,
5 which is getting -- has a right to get \$700,000 a
6 month, plus it only has to come up with a portion of
7 that money this year, even though Mr. Jahelka said he
8 was willing to come up with the hundred percent, the
9 \$3 million.

10 And Mr. Greenblatt, who has the
11 million dollars from Sugar Loaf, whatever they are,
12 and I really have no idea who they are, he can come
13 up with the monies this year, which are \$1,250,000.
14 Between them they have far in excess of capacity. In
15 addition to which -- now, I don't know that Scattered
16 Corporation could sell the 401 South Dearborn
17 property tomorrow. But since the next time that
18 money comes up it is owing is 2010, it is almost
19 unbelievable to think that an office building in
20 Chicago could not be sold in two years, on top of the
21 \$700,000 a month that Scattered is getting, and in a
22 market in which energy prices are rising.

23 And, frankly, since they are not
24 making any more of it, there is no reason to think
25 that energy prices are going to decline any time

1 soon. And there is no testimony to hear to indicate
2 that there is any reason to question the cash flows
3 of Scattered Corporation or Chiplease's ability.

4 Mr. Greenblatt testified that there is
5 \$150,000 a month clear that is coming out of
6 Chiplease after expenses. And between those things
7 that -- you know, that adds up to some serious money.
8 And on top of that, Chiplease has lent substantial
9 sums of money to RTC over the years such that its
10 ability to operate as a lender has been shown.

11 THE COURT: Okay. Let me just point
12 out that the best security you're offering to the
13 counter-parties to these agreements that IIT will
14 have the money that is needed to comply with IIT's
15 obligations is the unsecured promise of Chiplease and
16 Scattered Corporation to honor a loan commitment.
17 That's the security.

18 There is no lien on the property that
19 you referred to. There is no guarantee that if that
20 property is sold that the funds will remain in
21 Scattered Corporation or Chiplease. And there is no
22 opportunity, as I can see, for -- or at best a
23 lawsuit under a third-party beneficiary theory when
24 they are not a named third-party beneficiary in the
25 agreement.

1 So although you're very confident that
2 would be successful, they might reasonably be less
3 confident. Ordinarily third-party beneficiaries are
4 named in the agreements that they seek to enforce as
5 third-party beneficiaries. Now, it may not be always
6 the case, but it certainly would have given them a
7 great deal more comfort if they had been named.

8 But beyond that, it is completely
9 unsecured. They are relying on an unsecured promise
10 by two corporations that are not publicly held, have
11 no documentation that's been produced here as to what
12 their financial circumstances are. We have only the
13 testimony of two individuals as to what their net
14 worth and ability to make payments are.

15 MR. JORDAN: And I'm sure that in the
16 two years that Allied and two years that Peoria has
17 had to investigate these people and these things and
18 the time that has passed, that if they had
19 information to rebut the fact that Scattered
20 Corporation had the ability, they would have brought
21 that forward.

22 And if they had the ability, not
23 just -- we are talking about Allied and Chiplease,
24 and we're talking about somebody who has been in a
25 case almost since the beginning and has been dealing

1 with Chiplease since then. If they have something
2 that could show Chiplease's inability to act as a
3 lender, I would imagine that they would have found
4 that and they would have brought that forward in this
5 trial.

6 It is rebutted, their ability to
7 obtain those monies. Now, I can't do -- you know, I
8 don't know how anyone can do more than provide
9 un rebutted testimony as to a party's ability --

10 THE COURT: Let me make a suggestion
11 as to how someone could do more. Someone could have
12 an entity proposed to be the counter-party to these
13 agreements that would have sufficient capital of its
14 own to comply with the agreements, an entity that has
15 some track record of generating a profit in its
16 business operations.

17 Instead, we have a shell, the only
18 assets of which will be these contracts and the loan
19 agreement that they have with Scattered and with
20 Chiplease. That's it. There is no other security
21 here. Isn't that right?

22 MR. JORDAN: Are you referring to the
23 trust?

24 THE COURT: I am talking about IIT.
25 It's a shell containing only the agreements sought to

1 be assumed and the loan proceeds.

2 MR. JORDAN: No. That's incorrect.

3 THE COURT: What else?

4 MR. JORDAN: Because Your Honor has
5 already transferred -- first off, Mr. Connolly, I
6 believe, testified that the assets the -- and Mr.
7 Greenblatt confirmed that all of the physical assets
8 that Resource Technology Corporation had which were
9 assigned to Chiplease under the settlement agreement
10 that you approved on March 16, 2006, were assigned
11 from the trustee to Chiplease, Chiplease to Illinois
12 Investment Trust. So they have all the same -- all
13 the physical assets, in addition to which --

14 THE COURT: They have a number of
15 other operating agreements.

16 MR. JORDAN: Your Honor, in August of
17 '06, you entered an order authorizing the transfer of
18 contracts. And then in January of '07 you entered
19 another order authorizing transfer of contracts. So,
20 yes, there are other assets that are available. And
21 Mr. Connolly, I believe, testified that there were
22 plans to put other sites on line independent of
23 these.

24 And so there would be other assets
25 that in the event that Allied or the event that

1 Peoria sued, that they could not just look to the
2 assets here, but assets elsewhere. So they have
3 the --

4 THE COURT: We don't have any balance
5 sheet showing what the -- what the results of any
6 operations of the trust have been since the time it
7 was transferred?

8 MR. JORDAN: No, we don't have it.

9 THE COURT: No income statements or
10 anything of that sort?

11 MR. JORDAN: No, we don't.

12 THE COURT: Okay.

13 MR. JORDAN: I think that -- I mean,
14 what we have is -- actually, what we do have is we
15 have an entity that's in better shape than RTC was
16 when it entered into these agreements.

17 THE COURT: Well, I hope so.

18 MR. JORDAN: It has a track record
19 through the efforts of Mr. Connolly and the various
20 other employees. And I don't think Your Honor is not
21 mindful of the fact of the difficulties of operating
22 not just in this bankruptcy case, but in any
23 bankruptcy case, and particularly a bankruptcy case
24 in which there is a Chapter 11 trustee. There are
25 serious constraints. There are rules that are not

1 available in the ordinary discourse of business.

2 THE COURT: Let's see if we can get
3 each one of these items taken care of separately. So
4 we've got the question of whether this money will be
5 available.

6 MR. JORDAN: Right.

7 THE COURT: Now, is there anything
8 that requires the \$3 million loaned by Chiplease and
9 Scattered to be used exclusively for complying with
10 the obligations under the contracts sought to be
11 assumed here, those with Allied and with Peoria?

12 MR. JORDAN: Mr. Connolly testified,
13 Mr. Jahelka testified -- and I don't think I have the
14 agreement in front of me. I would have to look to
15 see whether there is a provision in the agreement
16 that indicates that it is for these sites. But it
17 very likely would be. But we have the testimony of
18 Mr. Jahelka.

19 And by the way, on the flip side, we
20 have your comment. It is kind of like looking at
21 your hand. And you're saying my palm. And I'm
22 saying use the back of my hand here. And you're
23 saying, well, what incentive does these people have
24 because of whatever? But they are the ones who are
25 the beneficiaries of the trust also, and so it is

1 their investment. They have a substantial incentive
2 to advance funds and to maintain the investment that
3 they have had.

4 You know, and there is a substantial
5 amount of monies that have gone in just in this whole
6 process. And they are indicating plans to go
7 forward, and there are -- you know, the pro formas
8 indicate substantial cash flows. They have every
9 incentive in the world based on the cash flows that
10 come through. And I do have for Your Honor a
11 demonstrative document that indicates the flow of
12 funds based upon Mr. Connolly's testimony as to
13 timing and utilization just --

14 THE COURT: Okay. You're moving into
15 the second question, whether \$3 million would be
16 enough, and I do want to get to that.

17 MR. JORDAN: Well, I'm trying to
18 show --

19 THE COURT: But I want to deal with
20 the first question first. Assuming, as has been
21 testified, that \$3 million or something close to
22 \$3 million is going to be required at the outset of
23 the contractual relationships that are planned here
24 pursuant to the cure schedule that's laid out, what
25 real assurance is there that that money will be

1 available for that purpose?

2 So the first question is will that --
3 is there any way of guaranteeing that Scattered and
4 Chiplease will put that money into IIT pursuant to
5 their loan agreement? And the question of the status
6 of the trust bears on that question. If they choose
7 not to, is there going to be any legally enforceable
8 right that could be imposed -- could be asserted
9 against them? That's a question.

10 The next question is if they did make
11 the payment to IIT as required, is there anything
12 that requires IIT to use that money for the purpose
13 of complying with its contractual obligations under
14 these contracts, or if it was finding itself being
15 pressed by one of its other contracts, would it be
16 free to use the money in that situation and hope that
17 perhaps cash flow would improve in the future?

18 MR. JORDAN: So if, for instance -- I
19 want to make sure of your question. You're saying is
20 there any assurance that the monies will actually be
21 -- that it's solely related to these sites? That's
22 the first question?

23 THE COURT: See, what usually happens
24 in a situation like this where there is some question
25 about the ability of someone to perform under a

1 contract, there is something that is presented to
2 give the counter-party assurance that there are funds
3 available to comply with the obligation.

4 And if all that we have here to
5 provide that assurance is a loan agreement with some
6 questionable ability of those third parties to
7 enforce the loan agreement, and with no guarantee
8 that any funds received by that loan agreement will
9 actually be used for their contracts, there may be
10 some question about the degree of assurance that
11 they're being offered.

12 MR. JORDAN: Well, let me just ask
13 Your Honor whether if -- and I don't have the
14 authority to do this because you're raising questions
15 right now. And, you know, maybe if these questions
16 had been raised when they were on the stand, it might
17 have been dealt with, but, you know, neither one of
18 us has a time machine.

19 THE COURT: Okay. I have been aided
20 by my law clerk who has found a citation from AmJur
21 Bankruptcy, Section 481. And I will read the
22 quotation that she has found. 48? Okay.

23 "A business trust is a voluntary
24 pooling of capital by a number of people who are
25 holders of freely transferable certificates

1 evidencing beneficial interests in the trust estate."

2 MR. JORDAN: That may be in that case,
3 but there are other cases --

4 THE COURT: That's their definition of
5 business trust. And as I was saying, when I looked
6 at this trust agreement, it looked like a pretty
7 standard common law trust with expanded powers of the
8 trustee, but it didn't look like a business trust to
9 me.

10 In any event, that's an issue that may
11 have to be addressed by further research. I raised
12 the question. You have given me your answer. We'll
13 move on to something else. But --

14 MR. JORDAN: And I've also had
15 willingness to provide -- you know, if we -- if the
16 order is conditional upon the assets from the
17 Illinois Investment Trust being placed into a
18 corporation --

19 THE COURT: But let's see --

20 MR. JORDAN: Hold on. I'm getting
21 into the -- into where -- what you talked about.

22 And if the order was conditioned upon
23 the filing of a stipulation saying that the monies
24 under this loan agreement would only be related to
25 these sites, and if Your Honor made it conditional

1 upon the filing of a stipulation indicating that
2 Allied, American Disposal and Sangamon Valley and
3 Peoria were third-party beneficiaries of the loan
4 agreement, then you can certainly make those
5 conditions of the approval. And --

6 THE COURT: Well, see, this is a
7 little bit like let's make a deal. What I am
8 supposed to do here is to pass on whether the
9 transaction that you're proposing, the assignee that
10 you're proposing is offering adequate assurance,
11 rather than to speculate about what might be adequate
12 assurance in lieu of what or in addition to what's
13 actually being proposed.

14 I could speculate that it might be
15 much better if you set up an escrow account and put
16 \$3 million into the escrow account and had some kind
17 of agreement that money could only be drawn out of
18 the escrow account for purposes relating to
19 performance under this agreement. That would be
20 better than what we have right now. It might provide
21 more adequate assurance than what we have right now.

22 But I don't think I want to speculate
23 with you about what alternatives to what's being
24 offered now would provide adequate assurance. I
25 think what I am required to do is make a

1 determination as to whether what is being proposed
2 now meets the requirements of Section 365 or not.

3 MR. JORDAN: Well, see, I think, Your
4 Honor, with all due respect, the problem is what
5 you're looking for is you're looking to provide these
6 people with a guarantee. And we're taking the word
7 adequate out of adequate assurance of future
8 performance. And they don't have -- they are not
9 entitled to an assurance of future performance. And
10 they are not entitled to an assurance that the monies
11 are going to --

12 THE COURT: You mean guarantee. They
13 are entitled to adequate assurance.

14 MR. JORDAN: No, I said I'm taking the
15 word adequate out. If it's an assurance, it would be
16 a guarantee. Is that what you said?

17 THE COURT: No. And let me make it
18 clear that at this point I am simply exploring with
19 you the extent to which assurance is given on each of
20 the three points that we're talking about. So if
21 there is anything more you want to say about the
22 extent to which it is assured that \$3 million will
23 actually be available for the purpose of funding the
24 obligations that IIT proposes to take under these
25 assumed agreements, we can move on to the next point.

1 But at this point, I think I
2 understand what the situation is. We have a trust
3 which may or may not be a business trust, with
4 whatever assets it has, which are not in evidence as
5 far as their value is concerned, together with a loan
6 agreement that may or may not -- we haven't gotten
7 into that yet -- specified any limitations on the use
8 of the funds that are provided pursuant to that loan
9 agreement, and without a designation of either Allied
10 or Peoria as a third-party beneficiary under the loan
11 agreement.

12 MR. JORDAN: Yes, but you do have the
13 testimony of the witnesses who say that the monies
14 are only going to be used for this purpose.

15 THE COURT: That's what they say. I
16 don't know that's -- that testimony creates any legal
17 obligation that would be enforceable by Peoria or
18 Allied.

19 MR. JORDAN: But there is no counter
20 testimony. I mean, you know, we can only go off what
21 the testimony is.

22 THE COURT: That's right.

23 MR. JORDAN: We can't go off of what
24 we would like somebody else to say. And, you know,
25 we are here today looking at the evidence before the

1 court. And there is no evidence that either of these
2 entities lacks the ability to fund.

3 THE COURT: Okay.

4 MR. JORDAN: Quite the opposite. Both
5 of them have presented evidence of their ability to
6 fund, and fund from various sources, substantial cash
7 flows from dry cleaning leases and from loans,
8 including a million dollars coming in in the last few
9 days to Chiplease. We have got testimony, which is
10 more than reasonable, that an oil and gas operation,
11 substantial one in Texas, turns out \$700,000 --

12 THE COURT: Okay.

13 MR. JORDAN: -- EBIDA, without the T,
14 that that -- and those monies are going to be
15 available to pay these.

16 Now, as far as the --

17 THE COURT: I'll just ask you one more
18 question on that score. Both Mr. Jahelka and
19 Mr. Greenblatt were asked why choose Illinois
20 Investment Trust as the vehicle for operating these
21 entities, as opposed to Chiplease or Scattered, the
22 entities that actually have this cash flow and have
23 these assets. And there was -- I did not perceive
24 any answer to that that gave a business basis for
25 that decision.

1 MR. JORDAN: I actually don't recall
2 that Mr. Greenblatt was asked that question. I think
3 you asked that question of Mr. Jahelka. And I am not
4 sure, but I don't know really what difference that
5 makes, particularly given Mr. Greenblatt's testimony
6 that they would -- you know, to the extent that it
7 created difficulty in the court, that they would turn
8 things into a transfer and assign it into the
9 corporation, which, by the way, as each of the
10 contracts are fairly assignable, that would be no
11 impediment to the assumption and assignment of the
12 contracts.

13 It would only be an impediment if
14 there was some indication that they would assign it
15 further. And there is none of that. In fact, quite
16 the opposite. The testimony of Mr. Jahelka was that
17 they didn't have any interest. They wanted to have
18 this entity presented. And that alternative was just
19 to assuage Your Honor's feeling with regard to the
20 trust.

21 THE COURT: Go ahead.

22 MR. JORDAN: Now, I think the
23 likelihood of sufficiency to assure compliance is the
24 second issue that you raised.

25 THE COURT: Is \$3 million going to be

1 enough?

2 MR. JORDAN: Right.

3 THE COURT: Assuming that that

4 actually is made available to --

5 MR. JORDAN: I did provide this
6 demonstration here, which I thought was valuable in
7 terms of both one and two. One, for the fact that
8 there is an indication of a total of \$14.5 million in
9 pretax profits that Illinois Investment Trust should
10 throw off, such that there is an incentive to fund
11 because of this.

12 In addition, to -- and this is just a
13 derivation of the numbers off of the loan documents
14 and off of Mr. Connolly's pro formas. So this isn't
15 creating anything new, but it's just putting it in a
16 different fashion, anticipating that Your Honor might
17 be confused with regard to the timing of the funds
18 and the payoff.

19 Because if you will recall, Mr.
20 Connolly did testify as to the fact that they were
21 going to start with Springfield and with Peoria, and
22 then move on to Litchfield and then to Bloomington.
23 And that was based upon information that they were --
24 as far as the Allied sites, that they received from
25 Allied.

1 And this shows a flow of funds such
2 that although it's \$3 million in gross, it's not \$3
3 million at any one time because the interest
4 payments, the principal pay down, the amount
5 remaining on the line of credit goes through on this
6 such that there is operations to pay down, that at
7 any one time there is less monies available, and the
8 less money available makes the likelihood of actually
9 advancing on those things greater.

10 So in 2008 there's a \$1,250,000
11 pay-down, and there's \$58,333.33 of interest -- I'm
12 sorry. Principal advance.

13 THE COURT: Okay. I don't have any
14 question about the sufficiency of the \$3 million if
15 Mr. Connolly's projections are correct.

16 MR. JORDAN: Right.

17 THE COURT: You've just recast the
18 numbers that he put on his projection.

19 MR. JORDAN: Right.

20 THE COURT: But he gave testimony. I
21 wrote the numbers down as he was giving the
22 testimony. His numbers work.

23 MR. JORDAN: Right.

24 THE COURT: The question is whether
25 his numbers are right. And the challenge came in the

1 testimony from Mr. Sloan to the effect that his
2 assumptions regarding the amount of gas that would be
3 able to be converted into electricity were likely to
4 be inaccurate, and that the costs involved in
5 operating the plant were likely to be too low.

6 MR. JORDAN: Right. Yeah. But I
7 think that misstates Mr. Sloan's testimony, because
8 what Mr. Sloan said was that, well, if they're only
9 running one engine now, so the revenue number is too
10 high. And then he said if -- if -- in fact, when Mr.
11 Schmidt talked to him or questioned him, he said if
12 you put three machines on, then you should be able to
13 pull the gas because each machine coming on will pull
14 more gas.

15 And he indicated in response to Mr.
16 Schmidt's questioning that a substantial number of
17 the wells were not in service. And when they were
18 put into service, that his testimony regarding the
19 amount of gas availability would not be accurate
20 because those -- the trapped gas that is in there,
21 because they are not going anyplace, would be able to
22 be utilized.

23 Now, I will acknowledge that gas may
24 dissipate over time. But if, in fact, it is not
25 mined out, then I don't think that the curves that

1 he's talking about make any sense, because he
2 admitted that there was a substantial number of wells
3 that were out of commission. And those commission --
4 those are going to be commissioned.

5 And, therefore, I think the testimony
6 of Mr. Sloan is not credible with regard to the gas
7 line based upon his own testimony when challenged.
8 In addition to which, he didn't really challenge the
9 expenses. What he said was is that these \$40,000 O&M
10 costs seemed low. But what he ignored was the fact
11 that they had the \$70,000 salary cost from Mr. --
12 that was Mr. Muir's salary that's on there still.
13 But that combined with the \$40,000 isn't \$40,000.
14 Obviously it's \$110,000. So if anything, Mr.
15 Connolly overestimated.

16 And I will also note that Allied did
17 not in any fashion challenge the pro formas for the
18 three sites that they have, Springfield, Litchfield
19 and Bloomington. And so there is no evidence before
20 us that indicates there is anything -- those pro
21 formas as far as Bloomington, Litchfield and Sangamon
22 are anything other than solid gold.

23 THE COURT: Okay.

24 MR. JORDAN: And as far as Mr. Sloan's
25 testimony, I am not sure how Your Honor could find

1 that credible based upon his own report that he
2 really didn't have any gas flows, and he had a
3 general sense of what was going on after '08, but the
4 Rust report ended in '08, and his own admission of
5 all the wells out.

6 So he contradicted his own testimony
7 when called on cross-examination. So I really don't
8 know that his testimony did anything to undercut Mr.
9 Connolly's pro forma, particularly with three engines
10 on line.

11 THE COURT: Okay.

12 MR. JORDAN: Which is the testimony.

13 THE COURT: Okay. Then the final
14 point is whether the individual involved here would
15 be able to -- would likely be able to comply with the
16 obligations of IIT, if IIT is allowed to accept an
17 assignment of these contracts.

18 MR. JORDAN: You know, with all due
19 respect to Your Honor, I think that's the easiest
20 burden to take, because what we have is we have Mr.
21 Connolly, who has over 15 years of experience here,
22 and in addition, experience with respect to chemical
23 waste management before that. We have Mr. Fortelka
24 who has over ten years' experience. Mr. Weeks has
25 over ten years' experience. Mr. Watson, Mr. Vallas.

1 All of the individuals have substantial experience in
2 the field.

3 Now, the difference is working for a
4 company which is working on a shoestring, working on
5 a limp along. They are not miracle workers, and they
6 cannot change the fact that they are using duct tape
7 and --

8 THE COURT: Now, let me back up here.
9 Throughout the entire history of RTC, it was owned by
10 Mr. Greenblatt, Mr. Jahelka, Mr. Nichols in some
11 combination through Rumpelstiltskin or whatever. And
12 if these individuals had the ability to run methane
13 gas-to-electricity conversion systems in an
14 efficient, efficient and profitable manner, and all
15 they needed was capital to do it, why weren't they
16 given the capital that they could have used to do
17 that?

18 MR. JORDAN: I think because Your
19 Honor appointed a Chapter 11 trustee. And I think it
20 is apparent that the Chapter 11 trustee --

21 THE COURT: The debtor in possession
22 operated for years before a Chapter 11 trustee was
23 appointed.

24 MR. JORDAN: But the violations --

25 THE COURT: With financing by Banco

1 Panamericano.

2 MR. JORDAN: That may be, but what --
3 what I think is important is Your Honor review the
4 violation notices and notices of violation. And what
5 you will find is as Mr. Sloan testified. The
6 problems with the site did not occur until after the
7 Chapter 11 trustee.

8 Please, take time to review all of
9 the -- not for the facts, but just for the dates of
10 the documents from the IEPA. And you will see that
11 the violation notices and the NOV's are almost
12 exclusively for the period of time in which the
13 Chapter 11 trustee operated.

14 THE COURT: I'm not talking about --

15 MR. JORDAN: And by the way --

16 THE COURT: -- violation notices. I
17 am talking about the ability to generate substantial
18 amounts of positive cash flow. Had that occurred
19 during the operation of RTC as debtor in possession,
20 we wouldn't have gotten to the point where a Chapter
21 11 trustee had to be appointed. There were
22 difficulties in making cash flow, making this company
23 work, generating a situation where a Chapter 11 plan
24 could have been confirmed during the operation of the
25 debtor in possession.

1 MR. JORDAN: I think both Mr. Sloan
2 and Mr. Connolly testified to the nature of the
3 rising prices of gas and electricity. And with all
4 due respect, Your Honor, the unit prices of those
5 items make all the difference in the world. And what
6 we have is a situation in which we didn't have China
7 on -- eating up energy like we do now. And we don't
8 have India eating up energy the way we do now.

9 And anyone -- I would subscribe to the
10 idea that anyone who says that energy prices are
11 going down, given the fact that India and China are
12 now huge producers and working their way into the
13 first world, is just kidding themselves.

14 And what we had was we had a different
15 period of time in which the purchase rate prices were
16 substantially different, and it changes totally the
17 metric for determining the profitability. And I
18 would think that in a world in which energy prices
19 are on the rise, that does two things. It increases
20 the likelihood of funding, because H&M Oil & Gas
21 would, therefore, generate more monies, which would
22 make it more likely that Scattered would have more
23 money to lend, which would make it more likely that
24 Scattered would lend, in addition to which, they're
25 selling gas at sites and they're selling electricity

1 at sites.

2 And the prices of those commodities
3 have increased substantially, and are, I think,
4 reasonable to assume aren't going down given the
5 emergence of China and India into the markets and
6 just the emerging world in general.

7 Now, we will have other problems, but
8 it certainly won't be falling energy prices. There
9 is no basis to believe that. So if they had during
10 the period before the Chapter 11 trustee the China
11 factor, if you will, then I am sure they could have
12 generated substantial --

13 THE COURT: Okay. The point that I am
14 making is simply this, and perhaps you've answered
15 it: Messrs. Greenblatt, Jahelka and Nichols through
16 their various entities determined not to provide
17 whatever financing RTC would have needed during the
18 course of the Chapter 11 case to avoid the shoestring
19 operations you talked about prior to the appointment
20 of a Chapter 11 trustee. Who knows what their
21 reasons were at that time.

22 But what you're suggesting is now in
23 an environment where energy prices are higher, it
24 will be in their interest to make those investments
25 and so we can count on them to fund the \$3 million

1 that's called for here.

2 MR. JORDAN: Well, Your Honor, I mean
3 it's a difficult burden that you're asking since I
4 never had -- would have heard of Mr. Greenblatt's
5 name prior to my initial phone call -- and I didn't
6 come to this case until 2000, October of '05 -- and
7 what happened before that.

8 But I think Your Honor is taking a
9 huge leap to say well, because Leon Greenblatt
10 operates a company, Chiplease, Inc., that has 15 to
11 \$16 million worth of assets and \$150,000 worth of
12 free cash flow, that he must have had those same
13 assets in the period prior to the appointment of the
14 Chapter 11 trustee.

15 I certainly don't know that, and I
16 don't have any testimony to back that up. I wasn't
17 here. I mean, I came into the case, and there are
18 days that I've regretted that, but I am here, and I
19 don't have any idea what went on then.

20 Scattered Corporation, Scattered
21 Corporation was not a lender to -- with the exception
22 of the Caterpillar loan that it purchased relating to
23 Peoria, and it did purchase and it was on the record
24 of \$7 million --

25 THE COURT: Okay, let me -- you're

1 entirely right in that to some extent what we are
2 talking about is speculation. I am simply reacting
3 to the idea that all of the problems here came about
4 because of a lack of funding that could have been
5 ameliorated if only the Chapter 11 trustee had
6 accepted the generous offers that Mr. Greenblatt was
7 making at the time to provide the funds necessary to
8 run RTC appropriately.

9 And my reaction to that is that Mr.
10 Greenblatt's entities were entirely in control of
11 RTC, both as operators and as lenders, prior to the
12 appointment of the Chapter 11 trustee.

13 MR. JORDAN: Well, first off, I really
14 don't know that. But, second, it's immaterial
15 because that was not the testimony that we elicited
16 from Mr. Connolly. I know because I asked the
17 question, and I asked the question several times.
18 And what I said is, is there -- questions that
19 related to whether he -- you know, he got
20 authorization from the Chapter 11 trustee to do
21 certain things.

22 And I asked him whether he blamed the
23 Chapter 11 trustee. And, frankly, only because it's
24 not any great surprise, I knew the answer to that. I
25 knew what Mr. Connolly was going to say. I actually

1 talked to him before the hearing. And I knew that he
2 was going to say that he didn't blame the Chapter 11
3 trustee because you can't blame the Chapter 11
4 trustee.

5 Now, Mr. Greenblatt, you know, he has
6 his own issues. And I don't know why we went off on
7 the little jag. But the reality is Mr. Connolly
8 worked with Mr. Szilyagi. And he understands that
9 Mr. Szilyagi had a tough job. And Mr. Szilyagi had
10 limited monies and he's a Chapter 11 trustee.

11 But we can't ignore the fact that this
12 entity was in a limp-along. And we can't ignore the
13 fact, as Mr. Greenblatt testified, and he testified
14 correctly I'm sure, as Your Honor will attest, the
15 Chapter 11 trustee was fighting with him and involved
16 in litigation.

17 And so it's hardly -- it would be more
18 surprising than not that Mr. Greenblatt would have
19 been even as magnanimous, and I use that term
20 extremely loosely, to come up with a \$600,000 offer.
21 They were fighting. Mr. Greenblatt didn't have a
22 huge incentive to make Mr. Szilyagi's life easy, but
23 Mr. Szilagyι certainly did nothing to make Mr.
24 Greenblatt's life easy either.

25 THE COURT: Okay. Let's get off this.

1 Is there anything else you wanted to argue?

2 MR. JORDAN: I want to highlight the
3 fact that the people that are running the operations
4 are not these fellows, Jahelka and Greenblatt. They
5 are engineers. You know, they have substantial
6 experience. They are real people who will go out
7 there and do jobs, and they do use duct tape and
8 pliers.

9 But you can't -- I just cannot imagine
10 that the efforts that these people put in under these
11 difficult circumstances, if they have financing, that
12 they can't provide the ability to comply with the
13 Illinois Environmental Protection Agency.

14 And I would note that when we looked
15 at Section 39, that with all due respect to Mr. Reed,
16 that there aren't any enforcement items, and that
17 that scrutiny that he talked about I don't think
18 applies based upon my reading of the statute. There
19 are going to be applications that are going to be
20 filed by people who have an incentive to fix
21 problems, who have an incentive to sit down --

22 THE COURT: Why don't you give me the
23 citation to the statute.

24 MR. JORDAN: I think it was 4.5
25 Illinois ILCS 5/39.

1 THE COURT: 415 ILCS.

2 MR. JORDAN: 5/39.

3 THE COURT: 5/39.

4 MR. JORDAN: Right. And also for 415
5 ILCS 5/39.5 and specifically Section 10.

6 THE COURT: 415 ILCS --

7 MR. JORDAN: Those are two different
8 sections, and they relate to two different issues
9 that we can address.

10 THE COURT: Okay. I've got Section
11 39. What's the subsection?

12 MR. JORDAN: Thirty-nine?

13 THE COURT: Yeah.

14 MR. JORDAN: Thirty-nine is a --

15 THE COURT: It's issuance of permits,
16 but there's several subsections. What's the one that
17 deals with the consideration of adjudications of
18 environmental violations?

19 MR. JORDAN: Let me find my notes,
20 Your Honor. I had it printed out and then I went --
21 I have to find --

22 THE COURT: It goes A through P, so it
23 will take a long time to read the entire section.

24 MR. JORDAN: I had it as part of my --
25 in A it indicates, Section A, about 40 percent of the

1 way down, "In making its determinations on permit
2 applications under this section, the agency may
3 consider prior adjudications of noncompliance with
4 this Act by the applicant that involved the release
5 of the contaminant into the environment." And
6 Mr. Reed confirmed Mr. Connolly's testimony that
7 there have not been any prior adjudications of
8 noncompliance.

9 THE COURT: Okay.

10 MR. JORDAN: So that relates to the
11 manner in which these permit applications will
12 proceed. And in addition to which, Mr. Connolly had
13 testified that they were going to be moving forward
14 and being proactive in meeting with the Illinois
15 Environmental Protection Agency to try to get in
16 front of these issues, as opposed to what I think
17 they had been doing previously, which is playing
18 catch-up.

19 And the fact that they have this
20 incentive is bolstered by the fact that they can go
21 to meetings and they actually have money to fix
22 problems. And you can't ignore the fact that there's
23 -- it is very difficult to make commitments without a
24 budget. And this entity has certainly been in a huge
25 limp along during the period from March 16th, 2006,

1 forward, given the fact that the permits, the
2 agreements have been in limbo as to what's going to
3 happen to them.

4 And it's not surprising that no one
5 would advance funds to pay for substantial
6 investments in properties without knowing that they
7 were actually going to be assumed and actually be
8 assigned.

9 THE COURT: Okay. Anything else?

10 MR. JORDAN: Give me just one second,
11 Your Honor.

12 (Brief pause.)

13 MR. JORDAN: I think looking at -- in
14 re Prime Motors, Inc., 166 B.R. 993, the court stated
15 that --

16 THE COURT: Give me the citation
17 again.

18 MR. JORDAN: 166 B.R. 993. It is the
19 Bankruptcy Court out of the Southern District of
20 Florida, 1994. And it indicates -- and although they
21 reference 365(b)(1)(C), I think that it applies for
22 apparent reasons to 365(f) as well. It says,
23 "Moreover the phrase adequate assurance of future
24 performance, for purposes of Section 365(b)(1)(C) is
25 to be given practical, pragmatic construction based

1 upon... the circumstances of the case." And there
2 are citations omitted.

3 Finally, "The assurance of future
4 performance is adequate if performance is likely;
5 i.e., more probable than not."

6 THE COURT: Yes. That's exactly what
7 I was asking you in each of the three areas that I --

8 MR. JORDAN: Right. And I'm trying to
9 show that it is more probable than not. I'm not --
10 and it indicates that as in that case, I think, where
11 the Prime debtors met their burden, I think that
12 we've made our burden here. And that as the Westview
13 74 Street Drug Corp. case, which is 59 B.R. 747,
14 which is a bankruptcy case out of the Southern
15 District of New York, 1986 -- again, that's 59 B.R.
16 727.

17 The court explained that the words
18 "adequate assurance of future performance is designed
19 by Congress to not mean absolute insurance that the
20 debtor will thrive and make a profit. The words
21 adequate assurance of future performance are not
22 words of art, but are intended by Congress to be
23 given a practical, pragmatic construction."

24 And that what we have here is the idea
25 that we have a source of funds. We have a profitable

1 business. We have the ability to make repairs to
2 make compliance a reality. We have individuals who
3 are operating who can comply. And with all due
4 respect to Mr. Reed, I think that if one were in --
5 if the court were to review the court order, which is
6 Exhibit 73, you will note that there are three
7 separate sections in that order that are provided
8 that give Mr. Henderson the right to do that which he
9 did, which is to file the permit by direction of the
10 court.

11 And one of the sections, and I believe
12 it's -- and I have to turn to it here, if you give me
13 just one second. Section G, Section H and Section K,
14 which all indicate that in various fashions giving
15 Mr. Henderson the right -- including a section that
16 indicates that he has a right to enter into permits
17 and licenses.

18 What we have here is that I am not
19 aware and there is nothing that we've seen that
20 indicates any issue of compliance -- of something
21 coming out from the IEPA. The IEPA can only issue a
22 notice of intent to deny. And that's what 415 ILCS
23 5/39.5 indicates. And there's -- and Section 10,
24 final agency action, they have the right to file --
25 deliver a notice of intent, and then the

1 counter-party has 15 days to reply.

2 And in this case, given the fact that
3 the evidence is pretty clear, and Mr. Reed was fair
4 and gave his testimony, indicating that if, in fact,
5 it can be shown by evidence that the items were
6 mailed on the day prior to the time that the office
7 closed, that the agency's position is that's timely.

8 And he indicated that if, in fact, a
9 court order was provided, that that very well could
10 be appropriate as -- for Mr. Henderson to file as a
11 responsible party. And in response to Your Honor's
12 indication, indicated that there was no difficulty,
13 by the way, having the people who are on the payroll
14 of RTC South Dakota operating on behalf of the
15 responsible party in operating these permits.

16 I think that in summary what we have
17 here looking at -- and again, it is a different
18 section, but it's the same concept. What we have is
19 a situation in which Allied and Peoria can only ask
20 for the benefit of their bargain. And they are
21 getting a better bargain with a -- than they did in
22 1995 and 1996 when they entered into these
23 agreements. They are -- they are entering into the
24 assignment that will be an agreement with a
25 well-capitalized company, with experienced personnel.

1 Now, the other thing is that as far as
2 Peoria, taking that aside, and Sangamon, what has to
3 happen is that RTC -- I'm sorry, the trust has to
4 file for a permit and proceed after the Sangamon --
5 under the stipulation, after the Sangamon Landfill is
6 finished by Allied, made in accordance with their
7 constructions (sic).

8 And there is a requirement in there
9 that our client have the permits or other approvals
10 that are required. So they are back-stopped by their
11 own items. In addition to which the Litchfield
12 agreement, our client has two years, to 2010, to
13 proceed under that because it isn't even -- that's
14 our projected date. But the contracts go well after
15 that. And then in Bloomington, it goes out even
16 farther in accordance with the plan.

17 THE COURT: Yes. I don't think that's
18 been challenged.

19 MR. JORDAN: I'm sorry.

20 THE COURT: That has not been
21 challenged.

22 MR. JORDAN: No. So it is not as if
23 our client has to show permits now. What they have
24 to show is that they have the ability to get permits
25 in the future. They have the personnel and they have

1 the capital and they have the ability. And they have
2 other sites that are operating in the State of
3 Illinois, Taylor Ridge, Viola, Ottawa, that will
4 provide the base line to make the likelihood of
5 obtaining the permits in Sangamon and in Litchfield
6 and in Bloomington a reality. And the stipulation
7 says that our client has to have that.

8 Now Allied is no -- you can't say that
9 it is disadvantaged by that, by its own stipulation,
10 particularly because --

11 THE COURT: Rather than argue against
12 Allied's argument now, why don't you save that for
13 rebuttal.

14 MR. JORDAN: All right. Thank you,
15 Your Honor.

16 THE COURT: All right. Who would like
17 to proceed first?

18 MR. APOLSTOLIDES: Judge, if I may for
19 just a moment just to make the record. Your Honor,
20 George Apostolides on behalf of the trustee.

21 THE COURT: Yes, Mr. Apostolides.

22 MR. APOLSTOLIDES: I didn't make an
23 opening statement. I didn't really participate in
24 the evidence. But it is the trustee's motion and I
25 don't think it needs to be said that --

1 THE COURT: That you adopt the
2 argument that Mr. Jordan has made.

3 MR. APOLSTOLIDES: Well, under the
4 motion it is the responsibility of the designee to
5 prove adequate assurance. And so for the record, the
6 trustee is here. The trustee is the movant, but, of
7 course, IIT is the one that has put in all the
8 evidence and made all the arguments.

9 THE COURT: Yes.

10 MR. APOLSTOLIDES: Thank you.

11 THE COURT: Again, who would like to
12 go first?

13 MR. BOHAN: Your Honor, I will proceed
14 in whatever order the court thinks appropriate. But
15 let me begin, because I think when Mr. Reed was on
16 the stand, I thought the section of the statute that
17 he referred to was 39(i), not 39(a). And according
18 to --

19 THE COURT: Well, let me check 39(i).

20 MR. BOHAN: All right. And I would
21 refer you to (i)(1).

22 THE COURT: I don't know that this
23 refers to the kind of permit we are talking about
24 here.

25 MR. BOHAN: Your Honor, I believe (i)

1 is the provision that he referred to.

2 THE COURT: Yes, but what I am saying
3 is that (i) refers to RCRA permits. What's that?

4 MR. BOHAN: Well, a RCRA permit, Your
5 Honor. That's not what we have here. But I believe
6 that the permit --

7 THE COURT: This isn't a permit for a
8 waste storage site, is it?

9 MR. BOHAN: No, Your Honor, but I
10 think -- Your Honor, he wasn't asked specifically
11 which words he was relying on.

12 THE COURT: Well, see, I just don't
13 know that subsection (i), as I look at it now, refers
14 to the CAAPP permits that he was testifying to.

15 MR. BOHAN: I thought --

16 THE COURT: As opposed to -- as
17 opposed to (a) that refers to any permit for
18 operation of any type of facility. It looks like (i)
19 is more narrowly tailored. And again, I am no expert
20 on this, but it just -- as you asked me to read it,
21 it refers to waste treatment facilities, waste
22 storage sites and RCRA permits, and so I am not clear
23 that that applies to a CAAPP permit, which is what
24 you're challenging their ability to obtain.

25 MR. BOHAN: I am, Your Honor, based on

1 the testimony of Mr. Reed, because it was my --
2 perhaps I'm mistaken, but when he was on the stand I
3 thought he specifically mentioned (i) as being the
4 source of the agency's authority in reviewing this
5 CAAPP permit to take into consideration these
6 repeated violations of environmental regulations.

7 THE COURT: Well, maybe that's right,
8 because sanitary landfill is in here. So if CAAPP is
9 a permit for a sanitary landfill, perhaps that's
10 right. Then the relevant language that you're
11 looking for is, "The agency may deny such a permit if
12 the prospective owner or operator or any employee or
13 officer has a history of repeated violations of
14 federal, state or local laws or there is proof of
15 gross carelessness or incompetence."

16 But, again, this looks to me like it
17 is dealing with something else, gross incompetence in
18 handling, storing, processing or disposing of wastes.
19 I think this is -- this is more -- this is directed
20 at something other than CAAPP.

21 MR. BOHAN: Well --

22 THE COURT: And even then, repeated
23 violations would require some kind of determination
24 that there had been a repeated violation.

25 MR. BOHAN: Well, Your Honor, there

1 have been certainly a multitude of notices of
2 violation. Mr. Connolly, you know, and RTC were put
3 on notice that their performance was in violation of
4 applicable environmental rules, not just at our
5 sites, but at the Peoria site and a host of other
6 sites, as Your Honor has heard.

7 THE COURT: Do you agree with
8 Mr. Jordan's observation that all of that took place
9 while RTC was operating under a trustee?

10 MR. BOHAN: Absolutely not, Your
11 Honor. Absolutely not. I believe some of those
12 violations took place while they were operating as
13 debtor in possession.

14 MR. JORDAN: I said -- I didn't say
15 all of them. I said the vast majority.

16 THE COURT: Okay.

17 MR. BOHAN: And in response to the
18 argument how are we any worse off, I mean, one
19 obvious way in which we are worse off is now we are
20 dealing with a counter-party that although Your Honor
21 correctly described it as a shell, but cut through
22 the shell. We're really dealing with RTC.

23 And we are dealing with the RTC now
24 that in its interactions with the IEPA has one long
25 established and ugly track record of environmental

1 compliance. And so that affects our ability to
2 extract the value from these gas contracts that we
3 thought we had when we entered them, with RTC in the
4 first place.

5 Now, let me go back to the beginning.
6 On the question whether it's a business trust or not,
7 Your Honor is absolutely correct, that record will
8 bear out. I put the question directly to Mr. Jahelka
9 and to Mr. Greenblatt and neither one of them gave an
10 answer.

11 Why? Why was the trust interposed
12 between these contracts and Scattered and Chiplease?
13 Why was the decision made, Mr. Jahelka, on behalf of
14 Scattered? And why was the decision made,
15 Mr. Greenblatt, on behalf of Chiplease to designate a
16 trust as, you know, the repository for these
17 contracts?

18 And Mr. Greenblatt's answer was I
19 don't exactly remember. Mr. Jahelka said something
20 like it must have been on the advice of counsel. So
21 that's the -- those are the responses we have to the
22 fundamental question whether this trust is an
23 appropriate entity through which to operate or
24 perform these contracts in the first place.

25 Now, it is actually -- I would like to

1 say that what they really want to do is take us back
2 to the future, right, because it is the same
3 employees, with the same -- operating out of the same
4 location, doing the same things under the control of
5 the same entities and ultimately the same
6 individuals, Mr. Greenblatt, using the same source of
7 funding, Chiplase.

8 So why in the world would any of us
9 think that the result is going to be any different
10 than the result we've already witnessed. It is worse
11 than that, though, because they've created this
12 Potemkin village of Illinois Investment Trust and
13 interposed the trust between the contracts and
14 Scattered and Chiplase. The trust, which has never
15 conducted any business of any sort, has never had any
16 employees, no assets, no operating history, no
17 permits of its own, no employees of its own, no
18 location of its own.

19 How in the world does that constitute
20 adequate assurance? How does that make my client
21 more certain of performance than if we had been
22 dealing with ITC (sic) in the first place ten years
23 ago? And it's worse than that because we really
24 don't know who is going to have these contracts. The
25 trust can be revoked. Mr. Connolly can be removed as

1 trustee by Mr. Jahelka and Mr. Greenblatt tonight
2 over a beer at the corner saloon, and he would have
3 no recourse.

4 And so when we talk about a loan
5 agreement between on the one hand Scattered and
6 Chiplease, and on the other hand IIT, we could walk
7 out of the courtroom tonight, Judge, and discover
8 tomorrow morning that all three of those parties
9 decided to mutually release and absolve each other of
10 any obligations under that instrument. There is no
11 obligation for Scattered or Chiplease to do anything
12 other than what they want to do. It's entirely
13 illusory. It's a complete sham.

14 I asked them is it the trust? I mean,
15 are we certain now that we're dealing with the trust?
16 Because when this process started more than a year
17 ago, we asked Scattered who is the designee? And it
18 is now the trust.

19 But under no circumstances have they
20 irrevocably committed to have the trust perform these
21 contracts. They could de-designate the trust
22 tomorrow and designate Loop Corp or the -- you know,
23 one of the other many Greenblatt-controlled entities,
24 and we would have no recourse. And this whole
25 proceeding would have been just a charade.

1 Now, I object strongly to the argument
2 that I think was implicit in much of what Mr. Jordan
3 said, and that is that I have the burden of proving
4 anything, all right, including the financial
5 condition of either Scattered or Chiplease.

6 THE COURT: No. His argument was that
7 they had met their burden by the testimony of Mr.
8 Jahelka and Mr. Greenblatt that these were highly
9 profitable and well-financed organizations.

10 MR. BOHAN: Okay. But he went
11 further, Your Honor, because what he said was we've
12 been going at it for so long don't you think for a
13 minute that if Allied had been scouring the
14 backgrounds of these individuals, had come up with
15 any information contrary to what they said on the
16 witness stand, we would have come forward with that
17 evidence. I object to that.

18 I took Greenblatt's deposition two
19 weeks ago, at a time when he told me that the bank
20 account of Chiplease had in it \$150,000. Now he
21 comes to court without any documents whatsoever and
22 tells me that the bank account has a balance of
23 \$1.2 million. What am I supposed to do with that?
24 How credible is that?

25 A company that he says does prepare

1 balance sheets. None were produced. None were used
2 in trial. None were marked as exhibits. A company
3 that he says does generate income statements. Where
4 is any of them, much less the most recent one? A
5 funds flow statement. We haven't seen anything. We
6 haven't seen anything.

7 Jahelka, on behalf of Scattered,
8 Jahelka freely admits that the company has no liquid
9 assets. It happens to be an owner in a commercial
10 real estate in a commercial building that's up for
11 sale. Well, that's not terribly unique. This isn't
12 the perfect market in which to be trying to sell real
13 estate, even assuming that he intended to apply the
14 proceeds of that sale to this venture. There is no
15 evidence of that.

16 And the other, the oil and gas
17 interests in Texas that he says are spinning off
18 hundreds of thousands of dollars, where is the proof
19 of that? I mean, where are the documents? Where is
20 anything?

21 There is not one iota of corroboration
22 for the testimony of what either of them said about
23 the financial health of their respective businesses.
24 And so what he's asking you to do is to rely on
25 Jahelka and rely on Greenblatt, and I think that's

1 not such a hot idea.

2 Jahelka is the guy who said -- told me
3 on the witness stand under oath that other than being
4 co-lenders to IIT, there is no business relationship
5 between Chiplease and Scattered. How plausible is
6 that? I mean, why didn't he just say we're all
7 controlled by Greenblatt.

8 Everyone knows that. Greenblatt is on
9 my board of directors, he owns 50 percent of my
10 shares. I sit on his board of directors. We both
11 sit on the board of Rumpelstiltskin. Through
12 Rumpelstiltskin we collectively control RTC.

13 How hard would it have been to fess up
14 to that. Why was it necessary for him to, you know,
15 argue with me and contend that the two companies are
16 completely unrelated? It diminishes his credibility.
17 And so when he tells you that he's got assets with
18 which to fund this \$3 million loan, that's certainly
19 something you should take into consideration.

20 Now, as for Mr. Greenblatt, I won't
21 even begin, you know, to go through the litany of
22 inconsistencies and outright falsehoods we heard from
23 him when he was on the witness stand changing his
24 testimony from just two weeks ago.

25 You asked, must the money being --

1 let's assume it's funded. Let's assume that the
2 3 million -- you know, the building is sold, the oil
3 and gas wells prove profitable, you know, the
4 mysterious real estate transaction for Chiplease
5 comes in, and now there's \$3 million. Will it be
6 used by Chiplease and Scattered to fund the loan?
7 Who knows. Who knows.

8 But Your Honor is correct that if it's
9 not, there is no recourse because the person who
10 controls on the other side of that contract is their
11 puppet. They control whether or not that agreement
12 is ever going to be enforced. No one else. So if a
13 new business venture finds its way onto Mr.
14 Greenblatt's desk tomorrow morning, you know, how
15 seriously is he going to take this loan agreement?

16 And even if the money were made
17 available to IIT, there is absolutely no obligation
18 under the loan agreement that IIT apply a dollar much
19 less all three million to these four sites. In fact,
20 it says something just the opposite.

21 THE COURT: What exhibit are we
22 talking about?

23 MR. BOHAN: I am talking about --

24 THE COURT: What is the exhibit
25 number?

1 MR. BOHAN: IIT 52.

2 THE COURT: I suppose I can put that
3 on the screen.

4 MR. BOHAN: Well, Your Honor, I'm not
5 sure it is worth it. It is a minor point. But on
6 page 5, paragraph 2.3, section 2.3, use of the
7 proceeds, you see it includes -- it identifies it as
8 a business loan presumably to take it out of the
9 Illinois usury statute.

10 But it is almost drafted in a way that
11 specifically reserves IIT's right to use it however
12 it sees fit. There is no requirement whatever that
13 any of the loan proceeds be applied to use -- to the
14 performance of any of our contracts.

15 THE COURT: Okay.

16 MR. BOHAN: All right. And Your Honor
17 just scrolled past another paragraph. I wasn't going
18 to say anything about it, but because I saw it, now
19 it jogs my memory. It is the agreement that is yet
20 to be negotiated or executed. And that is the
21 lockbox agreement, it's called in the agreement. I
22 think the deposit control agreement. It is up --
23 yeah, there it is, 3.12. No evidence of an
24 executed -- now, why is that important?

25 Well, that's important because the

1 money isn't going to go to IIT. The money is going
2 to go into a lockbox. And assuming everything plays
3 out as they would like you to believe, and some
4 portion is going to go to the lenders, and some
5 portion is going to stay with IIT, well, who gets
6 what? Who knows. All of Connolly's projections
7 depend on Connolly -- on IIT having a source of
8 available cash, some of which is going to arise from
9 IIT's performance of these contracts. But who knows
10 what portion is going to be made available to IIT.

11 Is it 90 percent that goes to the
12 lenders, 75 percent, 50 percent? Who knows. It's
13 all speculation right now, and that's not adequate
14 assurance. Put it this way, if they're asking you to
15 rely on essentially the good faith of Mr. Jahelka and
16 Mr. Greenblatt, I say, Your Honor, they've failed in
17 their burden.

18 Now, I am not going to -- I am not
19 going to dwell on the pro formas. It is true we
20 didn't offer any contrary evidence. We didn't offer
21 evidence directly impeaching the pro formas, because
22 I don't get past -- I am nowhere near the pro formas
23 yet, Your Honor.

24 I am at a more fundamental level.
25 Like how about this: Who pays the salary of John

1 Connolly? Connolly is employed by RTC, but
2 apparently he and his cohorts are on loan to IIT.
3 But who pays their salary? It seems like a pretty
4 fundamental question.

5 And before he starts talking about pro
6 formas for IIT, right, let's figure out what the
7 source of the funding for his salary and
8 Mr. Fortelka's salary is. When he was asked the
9 question, he says that, well, Peoria is, you know,
10 earning money. And if we need to, then we draw on
11 monies made available by Chiplase.

12 But when I asked Greenblatt about
13 that, he denied that Chiplase was funding the
14 operations of pre-petition RTC or that -- or IIT. So
15 before we get to Mr. Connolly's pro formas, I would
16 like to know just right off the bat who is paying
17 their salaries today. It would seem like -- you
18 know, it would seem a pretty fundamental question,
19 one that any one of them could easily answer. But at
20 the end of this trial, it's still a mystery.

21 And as I said, so much depends on
22 exactly what portion of the revenues are going to be
23 retained by IIT, what portion is going to go to the
24 lender, and that's then left up in the air. I think
25 on the question of -- Your Honor asked the question,

1 a good question about the individuals. Who is really
2 going to do the work? Who is going to be responsible
3 for performing these contracts?

4 And what we know is that the team that
5 is in place now -- and keep in mind, it could be a
6 very different team tomorrow -- but the one that's in
7 place now is the one that was responsible for the
8 history of defaults by RTC in the performance of its
9 contracts, not just with my client, the Allied
10 entities, but Peoria and other landfills as well.

11 And, you know, some fairly
12 significant, from my point of view, environmental
13 noncompliances, including -- we saw one of them. I
14 think it was our -- I can't remember which exhibit it
15 was, but having to do with the methane concentration
16 at the surface of the Sangamon Landfill which was,
17 you know, 2500 parts per million instead of 500 parts
18 per million. So the exceedance was a 400-percent
19 exceedance.

20 I think we have real question, real
21 concern, reason to doubt that Mr. Connolly and his
22 team can perform these contracts any better than they
23 have in the past. Now, I would suggest it goes
24 further, because I think they come into the courtroom
25 understanding that -- understanding that they have

1 got some -- they are carrying some baggage with them.
2 And so what we see is another illusion of assurance.
3 We see these contracts.

4 You know, that it's not us really.
5 We've contracted with X, Y, Z oil company to pick up
6 our waste oil. We've contracted with Trinity
7 Consulting to perform environmental monitoring. We
8 have contracted with whomever. And there are a whole
9 series of them right at the start of their exhibit
10 book.

11 But you look at any one of these
12 contracts -- and I heard Your Honor pick one at
13 random, Exhibit 11 or --

14 THE COURT: You really don't have to
15 belabor that. I discussed -- I discussed that with
16 Mr. Jahelka at the very -- or, no, Mr. Connolly at
17 the very outset. These are contracts that merely
18 indicate the willingness of the counter-party to
19 provide services or goods to IIT at its usual and
20 customary rate.

21 MR. BOHAN: It's an illusion, Your
22 Honor. That's my point. He testifies they have
23 contracts but there's no -- it's like his testimony
24 that we have a permit at Sangamon. That's not true.
25 Now they stipulate to that.

1 You know, it's an illusion. You
2 scratch the surface and there is nothing there.
3 There is no meat there. There is no operating permit
4 at Sangamon. They have to apply for a permit, and
5 who knows when that will be granted. And in the
6 first six months of this operation, if things go as
7 Mr. Connolly has suggested, they need \$1.3 million.
8 Where is that money coming from and when?

9 Your Honor, the burden is theirs. And
10 the proof that they've offered is insufficient. It's
11 insufficient certainly by a preponderance standard.
12 I don't know what standard it does meet. But you'd
13 have to lower the bar pretty low, it seems to me, for
14 the testimony in this case to prove on their behalf
15 adequate assurance of future performance.

16 THE COURT: All right.

17 MS. KUJACA: I will try not to belabor
18 the points that have already been talked about. But
19 I would like to start off by saying that I take
20 particular offense to the idea put forward by Mr.
21 Jordan that the onus was somehow upon counsel for the
22 landfills to obtain basically negative information on
23 the Greenblatt entities, that we have had two years
24 in which to dig this up and we haven't presented any
25 today, so therefore there must not be any.

1 Frankly, the trustee's motion to
2 assume and assign the Peoria lease has been pending
3 for months. This trial has been rescheduled several
4 times. IIT has had months to obtain concrete
5 financing, shore up its permit issues and obtain
6 compliance on its landfills, and it has chosen not to
7 do so. Given that the same general parties are
8 involved in the debtor, IIT, and the party giving the
9 loan, IIT could have started this work long ago.

10 In fact, they were contractually
11 obligated to do so. They claim they didn't have
12 sufficient funds to fix the defaults at the various
13 landfills, but they had had, however, the money to
14 pay several workers. I believe there was testimony
15 as to six workers, people to go to the landfill on a
16 daily basis, but apparently not to fix any of the
17 defaults while they were there.

18 And there was testimony that Chiplase
19 makes over 150,000 per month, but they didn't choose
20 to put any funds into the entity until now. John
21 Connolly testified that the Peoria site is making
22 \$25,000 per month.

23 But when I questioned him on the
24 stand, he said that RTC has not been paid by
25 AmerenCILCO since 2006. Peoria doesn't know where

1 \$25,000 a month is coming from. The gas being
2 produced is so variant right now that we don't know
3 that Ameren is getting anything. And Ameren --

4 THE COURT: Mr. Connolly testified
5 that they were going to get a settlement --

6 MS. KUJACA: They were going to get a
7 settlement. But he's also testified that they have
8 been getting \$25,000 a month from Peoria. Where that
9 money is coming from we have no idea. It's just the
10 financial equivalent of a shell game. And it is
11 exceedingly difficult for me or for anybody here to
12 actually follow the ball in that game.

13 None of the additional indicia of
14 financial wherewithal have been produced in this
15 case, as Your Honor has pointed out. We haven't seen
16 balance sheets. We haven't seen income statements,
17 tax returns, financial statements, bank account
18 documentation.

19 We haven't seen any of that. We
20 haven't seen a listing agreement for the Old Colony
21 Building, if one actually exists. We haven't seen
22 any agreements between Chiplease and Scattered. All
23 we have is documentation regarding a loan from
24 insiders to insiders.

25 One thing I actually want to bring up

1 before I forget is that Mr. Jordan discussed energy
2 prices in relation to when it was feasible for RTC to
3 -- profitable for RTC to fund this or the Greenblatt
4 entities to come and fund RTC. RTC was being paid
5 the retail rate up until not too long ago. They were
6 actually making more money from the sale of energy
7 than they are now, 6.7 --

8 THE COURT: Is that in evidence here?

9 MS. KUJACA: No, it is not.

10 THE COURT: Then you can't argue that.

11 MS. KUJACA: Okay. The testimony says
12 that approximately 75 percent of the funding may or
13 may not be from Scattered's sale of a building, a
14 partial interest in a building that is involved in
15 litigation, has been on the market for two years in a
16 bad real estate market.

17 It's just another example of various
18 contingencies in this case. There is a whole set of
19 contingencies as to whether IIT is going to get a
20 permit; whether the agency will find that it was
21 timely; that Harry Henderson has the ability to sign
22 the document; whether it can be transferred; whether
23 they can meet the compliance issues; whether those
24 can all be cured, another set of contingencies.

25 Additionally, there is more

1 contingencies as to whether IIT's projections are
2 correct. As Mr. Sloan testified, he doesn't agree
3 with them. Whether they cross-examine him and
4 confuse him and get different testimony out of him,
5 his testimony is -- his base testimony was that he
6 did not agree with them.

7 THE COURT: I have to tell you, Ms.
8 Kujaca, I didn't find that testimony in the end
9 persuasive. To the extent that the real question was
10 the amount of gas that would be able to be converted
11 to electricity, I think Mr. Sloan's testimony that
12 you needed two engines to deal with all the gas and a
13 flare as a backup would indicate that there is a lot
14 of gas there.

15 And, therefore, the idea that two
16 engines would not be able to produce the energy that
17 was contemplated by Mr. Connolly's pro formas is
18 probably not refuted.

19 MS. KUJACA: Be that as it may, in the
20 Texas Health Enterprises case, 246 B.R. 832, which
21 was an Eastern District of Texas case --

22 THE COURT: 246 B.R. what?

23 MS. KUJACA: 832.

24 THE COURT: Okay.

25 MS. KUJACA: In this case the court

1 found that there was no adequate assurance of future
2 performance. The court viewed ample evidence of
3 nonperformance of duties both pre and post-petition.
4 The court found that the parties had a poor working
5 relationship and poor communication, including
6 blatant disregard of duties under the contract.

7 The historical relationship between
8 these parties impacted on the assurance of future
9 performance. The court also found significant
10 credible evidence of Medicare and Medicaid
11 violations.

12 In that case the court discussed the
13 official comment 3 to the UCC in the 1972 edition.
14 They found that what constitutes adequate assurance
15 of future performance is to be determined by factual
16 conditions.

17 The seller must exercise good faith
18 and observe commercial standards. Satisfaction must
19 be based upon reason and must not be arbitrary or
20 capricious. Peoria's objection to the assumption and
21 assignment of the lease are neither arbitrary nor
22 capricious.

23 Our objections are based upon years of
24 substandard operations resulting in environmental and
25 health hazards, the failure of IIT to change the core

1 management of the assuming entity, the failure of IIT
2 to show adequate funding, sufficient permitting, and
3 other elements necessary for a safe, compliant
4 operation of the gas-to-energy conversion system.

5 In Professional Sales Corp., 56 B.R.
6 753, which was in the District Court of the Northern
7 District of Illinois, 1985, in reversing a stay under
8 Section 105, the district court stated that upholding
9 the stay would allow the debtor to operate its
10 facilities as a hazardous waste site despite
11 noncompliance with the Resource Conservation and
12 Recovery Act.

13 The court stated, "Neither the
14 Bankruptcy Code nor RCRA is intended to promote such
15 preferential treatments for Chapter 11 debtors." Id
16 at 764.

17 Further, the court found that the
18 bankruptcy court's order by suspending the EPA limits
19 on the debtor's future use of the property "does not
20 preserve the status quo but expands the debtor's
21 property rights beyond what they would be outside of
22 Chapter 11." Id.

23 In this case, the debtor has had
24 rights far exceeding those of a tenant outside the
25 bankruptcy context. In any other context this tenant

1 would have been gone a long time ago.

2 The last case I would like to cite is
3 a Judge Schmetterer opinion. In the 2005 case of in
4 re Repurchase Corporation, 332 B.R. 336, Judge
5 Schmetterer in the context of determining the
6 feasibility of a Chapter 11 plan, stated, "Optimistic
7 but hollow declarations from debtor's president about
8 hopes for funding did not satisfy its burden of
9 proof." Id at 343. The debtor's president in this
10 case was, of course, Leon Greenblatt, the same Leon
11 Greenblatt involved in this litigation.

12 In this case I sincerely hope that
13 optimistic but hollow declarations from the debtor's
14 president about hopes for funding again do not
15 satisfy the burden of proof. Thanks.

16 THE COURT: Mr. Jordan.

17 MR. JORDAN: Thanks again, Your Honor.
18 I just want to reiterate that there were few
19 violations of NOVs, VNs, prior to the appointment of
20 the Chapter 11 trustee. That is very clear --

21 THE COURT: Okay. Let me just point
22 out one thing. One of the violations that was
23 referred to in the testimony here is the violation at
24 the Connecticut Resource Recovery Administration site
25 that was the subject of a very long trial before me,

1 in which I heard any number of witnesses, including
2 large numbers and volumes of scientific evidence,
3 documents.

4 And the conclusion that I came to as a
5 result of that was that RTC, operating under no
6 constraints imposed by bankruptcy trustees, failed
7 substantially to comply with its obligations and as a
8 result allowed a very substantial migration of
9 methane gas from that landfill into adjoining
10 property, causing a very substantial problem for the
11 health and welfare of that community. And so the
12 notion that there were no problems and that
13 everything went very smoothly is at the very least
14 contradicted by the evidence that I took in that
15 particular case.

16 MR. JORDAN: I keep trying to say most
17 of the problems came after the appointment. And I
18 keep getting the sense that everyone is hearing me
19 say all the problems. They're in bankruptcy. You
20 know, they have -- they had financial problems. They
21 did -- RTC obviously had some problems because they
22 wouldn't have had an involuntary bankruptcy case
23 filed against them.

24 But the fact is that the trend -- you
25 know, clearly I wasn't involved in the CRRRA case, and

1 I have -- I am a hundred percent sure that you are a
2 hundred percent correct that there were problems and
3 that it had nothing to do with the Chapter 11
4 trustee. I am just trying to show the progression,
5 but I am not saying that I am coming from a point of
6 zero.

7 I am saying that substantially the
8 problems -- because there is a large part, unlike
9 everyone else who might believe this, is that I have
10 a strong identification with Mr. Connolly and these
11 fellows who are working there and they are being
12 castigated on a personal basis for somehow being
13 indifferent or uncaring or incompetent. My argument
14 is that they are competent and they are caring -- and
15 that they can do the job if they have the resources.

16 Now, we have already gone over the
17 source of the resources, but these people can perform
18 given the opportunity. And I don't think there is
19 any basis -- and I know that Your Honor has seen
20 these people over the years.

21 But, you know, the plan that is put
22 up, the fact that, you know, they had the ability to
23 go to people and say we know you have contracts with
24 Altorfer and Moser, but we want to put something in
25 front of the court just to make sure that they know

1 that you're committed, and these people all stepped
2 up and signed these agreements and said, yeah, we're
3 going to continue to do business with you.

4 That's an indication of people in
5 their community that are willing to do business with
6 them. And, you know, there are people who will say,
7 no, we are not going to do business with you. You
8 know, we don't like the way you do business. We're
9 not going to do it.

10 These people, solid -- Trinity
11 Consultants, Firm Green Energy, the company that
12 they're talking to about putting together the energy
13 conversion plant, Altorfer, who is working right now
14 contrary to what Ms. Kujaca said.

15 The evidence is that Altorfer is there
16 right now. Maybe not literally, since we're after
17 6:00 o'clock in the evening, but figuratively, fixing
18 the second engine to put it on. These are people who
19 are working with Mr. Connolly and Mr. Fortelka and
20 the other people there.

21 And now getting back to where we are.
22 The idea that Mr -- you know, that the straw man that
23 Mr. Bohan puts up that Mr. Connolly can be removed,
24 for God's sake, he's been there from '95 forward.
25 Mr. Jahelka testified he had no plans in changing

1 him.

2 There is no reason to think that if he
3 has been there for 13 years that he's suddenly going
4 to be gone tomorrow, or Mr. Fortelka who has been
5 there I think 12 years, or any of the other people,
6 Watson, Weeks, Vallis, Johnson, who have been there
7 over ten years. I mean, these people are -- and it
8 is more probable than not that that cord is there and
9 that they will do the job. And they even have, as
10 Mr. Connolly testified, Mr. Johnson doing business
11 development.

12 THE COURT: Go ahead.

13 MR. JORDAN: They have Mr. Johnson
14 doing business development work. They don't have any
15 plans to just throw this thing to the wind. That was
16 the testimony of Mr. Connolly as to what Mr. Johnson
17 was doing. In addition to his other items, he was
18 doing business development.

19 This idea that Mr. Bohan says well,
20 isn't it a fact that you could redesignate to confuse
21 Mr. Jahelka, you know, Mr. Jahelka testified and --

22 THE COURT: Okay. You know, I don't
23 want to spend a lot more time on this. Let me tell
24 you what the problem is. Whatever Mr. Connolly's
25 situation is, he can be removed. And his payment,

1 his current employment is entirely in the hands of
2 the very people who would be funding the loans that
3 he needs to operate this business.

4 If Mr. Greenblatt says to Mr.
5 Connolly, I have decided I am not going to fund this
6 \$3 million loan, Mr. Greenblatt is not going to be
7 sued by Mr. Connolly. If Mr. Connolly were to
8 institute a lawsuit against Mr. Greenblatt, Mr.
9 Greenblatt could remove Mr. Connolly from his
10 position as trustee. It's that simple. There is no
11 availability of any effective remedy.

12 Let's just come to this point, because
13 I don't think this matter needs to go any further.
14 Any time there is a need to provide adequate
15 assurance of future performance, the first thing
16 that's done is to show the financial ability of the
17 proposed counter-party to provide the services that
18 are necessary and to provide the assurance that that
19 financial ability will continue into the future.

20 So what does one typically do? One
21 looks at the operating history of the entity, one
22 looks at its balance sheet, one looks for any
23 guarantee of performance that can be offered, and
24 those things provide some kind of adequate assurance
25 that performance is going to be able to be provided.

1 What do we have here? We have an
2 entity that's never done business before, that has
3 provided no balance sheet, no income statement, that
4 acknowledges a need to have substantial funds
5 available in the near future.

6 And the only evidence that it has that
7 those funds will be available is a contract
8 negotiated with the same people on both sides of the
9 contract, and with, as I've just outlined, no ability
10 of the entity who is going to be providing the
11 services to sue for completion of the agreement
12 that's going to provide the financing.

13 The only assurance that we have that
14 this will be done is the statement by Messrs. Jahelka
15 and Greenblatt that they intend to do it. There is
16 nothing legally enforceable that would require that
17 to be done.

18 MR. JORDAN: Well, first off, Your
19 Honor, you can make your order conditional upon that.
20 But, second, I think if we looked at the case of in
21 re Casual Male Corp., 120 B.R -- and you know what, I
22 have the cite here because -- it's 120 B.R. 256 at
23 265, in which the court said that -- to paraphrase,
24 because I just had this as a paraphrase -- that
25 because the trust in this case, the corporation in

1 that case, is in essence a newly-formed entity, its
2 operating performance is obviously nonexistent. But
3 contrary to the counter-parties' assertions, this
4 does not prevent assumption of the contract.

5 As noted by the court in that case,
6 any judgment concerning the strength of the newly
7 formed entity's operating performance necessarily
8 depends upon the business experience of the chief
9 executive officer.

10 All right. And I think that with all
11 due respect, I don't know that you can really
12 question Mr. Connolly's abilities as a chief
13 executive officer. Now, in that case I will say --

14 THE COURT: Let me have the citation
15 of the Casual Male case. Let me have the citation
16 again.

17 MR. JORDAN: It's 120 B.R. 256. In
18 that case the chief executive officer was also the
19 owner. But I don't know that that makes a
20 substantial difference, particularly if Your Honor
21 puts in conditions regarding the ability to provide
22 funding.

23 And I would note, Your Honor, that in
24 the recitals to the loan agreement, it does indicate
25 that the loan is for these four sites. And contrary

1 to Mr. Bohan's assertion with regard to the amount of
2 money and the -- to be determined between the trust
3 and the lenders, that was a section that we put in
4 front of Mr. Greenblatt, so it was highlighted to
5 you, in that 75 percent of the monies go to the
6 lenders and 25 percent of it goes to IIT.

7 And it's set up to prevent default
8 because it's based -- repayment out of revenues,
9 rather than have a fixed payment on a monthly basis
10 which could be susceptible to default. They're
11 saying that they are trying to lessen --

12 THE COURT: Yes. I am not concerned
13 about that provision. I am concerned about the
14 ability of the trust to enforce the loan agreement
15 against the parties who are providing the only source
16 of payment for the obligations that are going to be
17 assumed and assigned.

18 And what I am telling you is that
19 based on everything I've heard, I have come to the
20 conclusion that that assurance is not present here,
21 that we have an entity with no operating history and
22 with no enforceable obligation to obtain the funds
23 that it needs to comply with these agreements.

24 Now, you're telling me that I could
25 impose conditions that might change that

1 circumstance. That's not the obligation of the
2 court. As I said earlier --

3 MR. JORDAN: I did not say you're
4 obligated --

5 THE COURT: -- the obligation of the
6 court is to look at the agreement -- excuse me, to
7 look at the circumstances that are presented by the
8 proposed assignee and make a determination as to
9 whether those circumstances as presented to the court
10 provide adequate assurance of future performance.
11 And what I have found here is that the circumstances
12 do not.

13 The \$3 million loan is absolutely
14 essential, based on all the testimony I have heard,
15 for the performance of these contracts, but there is
16 no effective legal enforcement that the trust would
17 have to obtain payment of that -- of those loan
18 proceeds. I will also add that I don't believe there
19 is sufficient evidence to show the ability of the
20 proposed lenders to make those loan payments.

21 I would have expected in order to be
22 persuaded of that to see balance sheets, income
23 statements and other evidence beyond the oral
24 testimony of the principals of those entities, but
25 that's not the principal problem.

1 The principal problem is that those
2 entities, their principals, Mr. Jahelka and Mr.
3 Greenblatt, could determine at any point that they
4 chose not to fund the loan, and Mr. Connolly would
5 have no effective means of enforcing the obligation.
6 And the counter-parties would have even less of an
7 opportunity to enforce the obligation because they
8 are given no rights under any of these agreements.

9 You may be right that there might be
10 some implicit right as a third-party beneficiary, but
11 I think that would be a very slender read on which to
12 base a finding of adequate assurance of future
13 performance.

14 So on that basis, that the funds
15 necessary to allow for an effective performance under
16 the contract sought to be assumed here cannot be
17 given without some assurance of an ability to enforce
18 the loan agreement that is the only basis for the
19 funds necessary to perform, I have to find that the
20 trustee, through you, has not met its burden, his
21 burden, in the matter presently before the court.
22 And, therefore, I will deny the motion.

23 Now, if you want to come up with some
24 other arrangement, it may be that you have the
25 opportunity to do that, and you can present that to

1 the court. But there has not been a showing of
2 adequate assurance that would enable me to allow the
3 assignment that's being proposed now.

4 MR. JORDAN: You know what, Your
5 Honor, I appreciate it. And perhaps what we'll do is
6 come up with a different arrangement and file a
7 motion to reconsider, and then Your Honor can
8 determine what --

9 THE COURT: Well, it wouldn't be a
10 motion to reconsider. It would be a motion to
11 consider a new arrangement.

12 MR. JORDAN: That's fine.

13 THE COURT: And if you want to do
14 that, and if that's timely, I will certainly consider
15 that. But this arrangement, for the reasons I have
16 just given, does not meet the requirements of that.

17 MR. JORDAN: Because of the
18 indirectness in particular?

19 THE COURT: Well, and, you know, I
20 could go through in more detail. I do believe --

21 MR. JORDAN: I would actually much
22 prefer that you go into great detail --

23 THE COURT: Well, I have already
24 outlined some of --

25 MR. JORDAN: -- so we don't do this

1 three or four times.

2 THE COURT: The fact is I believe this
3 is not a business trust. I believe this is a common
4 law trust, and that as a common law trust it cannot
5 be brought into an involuntary bankruptcy, which is
6 just another indication that the counter-parties to
7 these agreements would not have an effective way of
8 enforcing any right that the trust might have to
9 payment of these loans.

10 I am concerned that there is nothing
11 in the loan agreement that requires the funds that
12 are required to be loaned to be used for the purposes
13 of performance under these particular landfill gas
14 conversion agreements.

15 And I do have some concern about the
16 permit situation. I believe, based upon Mr. Reed's
17 testimony, that the problems that exist now are
18 likely to be able to be fixed. But we didn't have an
19 opportunity to thoroughly explore the statutory
20 provisions.

21 I don't know that the provision in the
22 sub (i) section that Mr. Bohan cited is not
23 applicable. And it may be that a history of
24 violations, even if they have not resulted in
25 adjudications, might be a problem here. I would have

1 to do research to find that out.

2 But the principle and the basis on
3 which I am rendering my decision today is that the
4 counter-parties to this contract, these contracts,
5 have no ability to assure that the funds necessary
6 for performance by the proposed assignee will
7 actually be made available.

8 And if another provision -- another
9 arrangement were submitted to the court that gave
10 those kinds of assurances, it is possible that this
11 transaction, these transactions, could be approved.

12 MR. JORDAN: Thank you.

13 (Which were all the proceedings had in
14 the above-entitled cause, February 13,
15 2008, 9:30 a.m.)

16 I, AMY B. DOOLIN, CSR, RPR, DO HEREBY CERTIFY
17 THAT THE FOREGOING IS A TRUE AND ACCURATE
18 TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-
19 ENTITLED CAUSE.
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<p>A</p> <p>abbreviate 67:18</p> <p>abilities 255:12</p> <p>ability 17:14 45:21 65:1 121:10,11 161:21,24 162:6 187:3 189:3,10 190:14,20,22 191:6,9 196:25 197:6 202:2,5 209:12 210:17 216:12 221:1 223:24 224:1 226:24 229:1 244:21 250:22 253:16,19 254:9 255:21 256:14 257:19 258:17 261:5</p> <p>able 15:13 74:7 78:13 78:17,19,21 80:10 90:10 95:3 98:22 109:14 118:23 119:20 122:1 149:8 162:10 162:13 163:3,9 166:20 179:18 206:3 206:12,21 208:15,15 245:10,16 253:25 260:18</p> <p>above-entitled 261:14</p> <p>absolute 220:19</p> <p>absolutely 21:12 228:10,11 229:7 235:17 257:13</p> <p>absolve 231:9</p> <p>academic 4:15,22</p> <p>accept 7:14 50:18 136:22 144:7 150:25 151:23 208:16</p> <p>acceptable 14:11 181:10</p> <p>accepted 144:4 154:16 214:6</p> <p>accepts 170:1</p> <p>access 83:16 109:16</p> <p>account 48:7 199:15,16 199:18 232:20,22 243:17</p> <p>accumulate 15:19</p> <p>accurate 101:16,18,24 206:19 261:16</p> <p>accused 48:6</p> <p>achieve 84:18</p> <p>acknowledge 206:23</p> <p>acknowledges 254:4</p> <p>acquire 184:6</p> <p>acre 59:19</p> <p>act 66:17,20 67:4,4 79:8,15 96:1 101:8 108:2 110:9 131:3 136:2 139:2 155:20 164:23 173:23 174:2 181:24 186:17 191:2 218:4 247:12</p> <p>acting 43:12</p>	<p>action 6:3 7:8 9:6 137:23 186:18 221:24</p> <p>actions 17:15 115:19 115:20</p> <p>active 58:15 188:4</p> <p>activities 129:15</p> <p>activity 180:10 182:10 183:10</p> <p>actual 90:13 118:17 121:1 122:12 141:24</p> <p>AD 67:17</p> <p>add 100:22 257:18</p> <p>added 106:17 137:22</p> <p>adding 95:14</p> <p>addition 114:13 116:14 118:21 184:11 188:15 192:13 199:12 204:12 207:8 208:22 211:24 218:12 223:11 252:17</p> <p>additional 22:1 84:17 96:22 143:14 144:15 152:17 153:5 171:10 171:13 172:21 183:22 243:13</p> <p>Additionally 65:3 244:25</p> <p>address 129:11 159:6 160:7 170:2 179:10 217:9</p> <p>addressed 156:7 198:11</p> <p>addressing 134:24</p> <p>adds 189:7</p> <p>adequate 6:14 9:2 160:17 161:25 162:22 162:22 163:6 179:21 199:10,11,21,24 200:7,7,13,15 219:23 220:4,18,21 225:5 230:20 237:13 241:15 246:1,14 247:2 253:14,24 257:10 258:12 259:2</p> <p>adjacent 137:15</p> <p>adjoining 249:9</p> <p>adjudicated 174:18</p> <p>adjudication 174:15,19 174:24</p> <p>adjudications 174:1 175:2 217:17 218:3,7 260:25</p> <p>administer 184:20</p> <p>Administration 248:24</p> <p>administrative 118:4 126:25 129:1,17,19 130:7 133:5 164:1 166:6</p> <p>administratively 140:15</p> <p>Administrator 100:13 100:17</p> <p>admissibility 118:1</p>	<p>120:1</p> <p>admissible 114:8 117:24 120:6 121:15 122:5</p> <p>admission 116:21 117:10,19 119:1 121:19 208:4</p> <p>admit 122:14</p> <p>admits 233:8</p> <p>admitted 114:24 117:15 121:17 207:2</p> <p>adopt 225:1</p> <p>advance 18:21 134:15 195:2 205:12 219:5</p> <p>advances 22:1</p> <p>advancing 20:4 205:9</p> <p>advice 229:20</p> <p>advising 23:17</p> <p>advisory 4:24</p> <p>affiliates 48:1</p> <p>afternoon 167:7</p> <p>agency 45:24 56:23 57:12 71:8 72:14,22 73:14 74:21 75:15 115:5 116:7,9 120:13 121:25 123:13 133:4 139:7,10 144:16 158:4 168:17,23 169:23 173:3 174:1 216:13 218:2,15 221:24 227:11 244:20</p> <p>agency's 222:7 227:4</p> <p>agent 36:21</p> <p>aggregate 37:24</p> <p>ago 11:16 15:23 32:23 33:7 73:2 230:23 231:17 232:19 234:24 242:9 244:5 248:1</p> <p>agree 7:11 8:4 15:5 16:15 19:9 24:3,19 25:8 81:17 82:15 84:14 85:12 86:23 103:2 228:7 245:2,6</p> <p>agreeable 9:6 11:11</p> <p>agreed 15:4 25:6 146:21</p> <p>agreement 8:18 14:24 24:4,12,13,17,20 25:4 25:7,15,24 28:3,4 51:13,23 52:6 53:5,8 57:21,22,24 58:5,9 71:19 91:16,18 107:7 172:3 179:12,16 182:19 183:4,24 184:3,22 185:15 186:2,11,13 189:25 191:19 192:9 194:14 194:15 196:5 197:5,7 197:8 198:6,24 199:4 199:17,19 201:6,9,11 222:24 223:12 231:5 235:11,15,18 236:19</p>	<p>236:21,21,22 243:20 254:11 255:24 256:14 257:6 258:18 260:11</p> <p>agreements 6:18 15:3 162:13 179:19 184:13 186:24 189:13 190:4 191:13,14,25 192:15 193:16 200:25 219:2 222:23 243:22 251:2 256:23 258:8 260:7 260:14</p> <p>agrees 102:22</p> <p>agricultural 55:11</p> <p>ahead 10:12 49:15 53:3 90:25 167:4 203:21 252:12</p> <p>aided 197:19</p> <p>air 56:22 62:10 66:17 66:18,20 67:4 96:1 101:8 108:2 110:9 123:22,24 124:11 125:9 131:3 238:24</p> <p>alive 59:3</p> <p>allegations 114:17 116:11,12 119:7,11</p> <p>alleged 185:4</p> <p>alleviate 44:14</p> <p>Allied 1:13 112:5,15,22 112:23,24 113:9 121:9 157:21 158:22 162:4 163:9 173:7,10 183:19 190:16,23 192:25 194:11 199:2 201:9,18 204:24,25 207:16 222:19 223:6 224:8 232:13 239:9</p> <p>Allied's 71:25 224:12</p> <p>Allied/Springfield 156:20</p> <p>allow 19:9,13 117:10 135:5 136:19 175:19 187:5 247:9 258:15 259:2</p> <p>allowance 29:21</p> <p>allowed 114:5 170:15 181:11 208:16 249:8</p> <p>allowing 184:3</p> <p>allows 134:4 138:25 181:25 184:6,12</p> <p>alternative 43:4 203:18</p> <p>alternatives 199:23</p> <p>Altorfer 175:16 250:24 251:13,15</p> <p>ameliorated 214:5</p> <p>amenable 5:25 6:15 185:16,16,22</p> <p>amended 50:21</p> <p>amendment 127:1 129:1</p> <p>Ameren 86:18 243:3,3</p> <p>AmerenCILCO 242:25</p> <p>Ameren's 90:7</p>	<p>American 199:2</p> <p>AmJur 197:20</p> <p>amount 14:18 15:5,5 21:23 24:3,18 25:8 35:4 37:23,25 45:4 51:6 79:8 87:12,13,18 89:5,9 91:14 95:14 96:16 102:19 103:4 104:15 147:18 179:14 195:5 205:4 206:2,19 245:10 256:1</p> <p>amounts 210:18</p> <p>ample 246:2</p> <p>Amy 1:18 261:16</p> <p>analysis 102:5</p> <p>Anchor 104:5,14</p> <p>and/or 46:3 57:23</p> <p>annual 58:5,8 62:3,4</p> <p>answer 26:4 31:22,25 32:3,5 33:11,22 34:10 34:14 47:4 72:25 82:13 94:9,25 95:3 99:21 108:5 128:10 154:12 157:6 172:8 173:18 174:6,22 198:12 202:24 214:24 229:10,18 238:19</p> <p>answered 132:1 145:18 212:14</p> <p>answering 113:14</p> <p>answers 31:18 32:11</p> <p>anticipate 21:4 23:13</p> <p>anticipates 184:17</p> <p>anticipating 204:16</p> <p>anybody 3:12 146:17 173:2 175:13,19 243:11</p> <p>anyplace 206:21</p> <p>anyway 63:11 172:15</p> <p>apologize 16:10 49:6 94:7 100:6 101:3 141:21 142:16 161:3</p> <p>APOLSTOLIDES 224:18,22 225:3,10</p> <p>Apostolides 1:10 3:5,6 3:11 4:11 9:12,24 38:13 39:11 224:20 224:21</p> <p>apparent 209:20 219:22</p> <p>apparently 50:7 52:1 53:2,10 95:8 238:2 242:16</p> <p>appear 70:4 77:3 120:16,22 122:12 148:8</p> <p>appearances 1:8 69:2</p> <p>appears 76:5 77:8 85:24 89:17 131:3 147:19 160:3</p> <p>apples 161:18</p> <p>applicable 46:5 94:22</p>
--	--	--	---	---

124:23 129:10 133:18 173:24 228:4 260:23 applicant 127:4 130:13 132:8 133:2 149:8 167:10 171:5,5 172:10,13 174:2 218:4 applicant's 158:12 159:21 164:15,18 application 56:25 57:11 68:14 77:4,14 77:15,18,19 111:14 111:19 113:5,6 126:21 127:5,13,16 129:9,12 132:17 133:3,4,8,16 137:4 138:8 139:4,6,15,16 139:25 140:14 141:4 141:5 142:7,22,25 143:3,8,10,16,22 144:4,8,13 145:9,11 146:11 147:14 148:16 148:18,20 149:9,14 149:14 150:11,19 151:1,7,19 152:9,23 153:14,20,25 154:1 157:17 158:10 159:20 160:24 164:14,20 165:21 168:10,11,13 168:24 169:3,6 170:13,15,22,23 171:1,24 177:9,9 applications 58:16 60:24 77:24 126:19 126:20,23,24 144:7 154:22 157:7,13 158:2,3 170:7 172:14 173:25 216:19 218:2 218:11 applied 132:6 236:13 applies 216:18 219:21 226:23 apply 161:17 233:13 235:18 241:4 applying 129:9 183:3 appointed 3:19 37:4 209:19,23 210:21 appointment 92:24 212:19 213:13 214:12 248:19 249:17 appreciate 156:13 259:5 approach 49:13 84:15 174:7 appropriate 54:1 58:17 74:10 155:15 163:21 169:3 222:10 225:14 229:23 appropriately 122:1 214:8 approvable 130:9 165:25 166:12	approval 19:14 28:3 61:5 134:11 173:16 199:5 approvals 160:14 223:9 approve 77:15,19,23 approved 19:12 44:24 77:17 111:13 153:18 158:4 170:22,23 192:10 261:11 approximately 12:21 14:14 35:24 59:18 60:10 84:4 244:12 Aquila 19:7 arbitrary 246:19,21 area 110:11 areas 111:2 220:7 argue 120:1 178:22,25 216:1 224:11 234:15 244:10 arguing 116:19,21,23 argument 118:5 119:23 119:24 170:17 174:12 178:21,23 186:23,24 224:12 225:2 228:18 232:1,6 250:13 arguments 225:8 Arizona 117:13 arose 69:11 arrangement 258:24 259:6,11,15 261:9 arrangements 78:21 art 220:22 article 117:13,17,20 articles 118:16 ascribing 93:5 aside 16:25 176:5 223:2 asked 26:4 43:10 47:10 47:15 50:21 65:17 107:3 108:16 145:15 145:19 156:23 202:19 203:2,3 214:16,17,22 226:10,20 231:14,17 234:25 238:8,12,25 asking 38:22,24,24 41:11,19 51:16,18 110:1 113:15 146:14 160:6 172:5 173:17 175:2 185:11 213:3 220:7 233:24 237:14 asserted 64:25 74:1 114:5,25 196:8 asserting 122:19 assertion 256:1 assertions 255:3 assess 78:14 79:14,16 assessed 103:22,25 109:7 assessment 43:17,20 61:12 81:17 95:4 assessments 61:10 asset 28:16 assets 6:19 7:3,4,14	11:13 12:22 18:17 28:9,12,13,17,23 29:19 34:2,5,13 48:2 48:6 183:15 187:21 191:18 192:6,7,13,20 192:24 193:2,2 198:16 201:4 202:23 213:11,13 230:16 233:9 234:17 assign 124:17 133:13 203:8,14 242:2 assignable 7:12 183:21 203:10 assigned 22:19 23:12 179:16 192:9,10 219:8 256:17 assignee 40:14 41:2,8 41:16 183:23 199:9 257:8 261:6 assignment 9:7,8 50:18 187:5 203:11 208:17 222:24 246:21 259:3 assist 70:19 assisted 56:21 61:18,19 71:18 Associates 56:11,12,17 89:15 91:19 106:17 assuage 203:19 assume 9:16 80:10 162:14 186:9 212:4 235:1,1 242:2 assumed 6:18 85:24 105:11 163:7 179:16 192:1 194:11 200:25 219:7 256:17 258:16 assuming 7:15 9:7 105:5 195:20 204:3 233:13 237:2 247:1 assumption 9:7 86:10 86:11 187:5 203:11 246:20 255:4 assumptions 85:12 86:24 104:13,16 105:1,16 206:2 assurance 6:14 9:2 57:1,6 160:17 161:25 162:22 163:6 179:21 195:25 196:20 197:2 197:5,10 199:10,12 199:21,24 200:7,9,10 200:13,15,19 219:23 220:3,18,21 225:5 230:20 237:14 240:2 241:15 246:1,8,14 253:15,18,24 254:13 256:20 257:10 258:12 258:17 259:2 assurances 261:10 assure 179:15 203:23 261:5 assured 200:22 attached 140:24 141:3	170:10,18 attachment 120:14 attempt 7:2 attention 70:2 attest 215:14 attorney 42:4 130:16 August 15:25 76:6 192:16 Aurora 182:5 authorities 117:18 121:2 authority 115:22 117:22 151:5 171:9 184:19 185:21 197:14 227:4 authorization 214:20 authorized 131:22 151:24 152:5 155:5,6 155:9 168:15 authorizing 170:6,12 192:17,19 availability 206:19 253:11 available 7:16 14:18,19 84:1 96:22 102:9,20 103:5 104:11 105:17 120:11 183:17 192:20 194:1,5 196:1 197:3 200:23 202:15 204:4 205:7,8 235:17 237:8 237:10 238:11 254:5 254:7 261:7 avenues 62:10 63:5 128:25 average 78:7 86:2 avoid 61:7 212:18 aware 13:2 41:22,22 44:6,8 45:18 46:2,17 50:7,9 71:1 82:5 103:20,24 125:21,22 127:18,20 145:3 151:8,13,21 221:19 a.m 1:4 261:15 <hr/> B <hr/> b 1:3 3:3 94:19 115:5 261:16 bachelor 55:9 bachelor's 123:18 back 43:22 57:22 67:14 68:5 89:8 95:23 96:9 96:13 126:4 135:7 141:16 143:18 148:24 149:24 152:19 166:1 166:13 178:23 194:22 209:8 213:16 229:5 230:1 251:21 backed 102:8 background 55:5 123:15,16 backgrounds 232:14 backs 81:2	backup 245:13 backwards 159:5 back-stopped 223:10 back-up 96:12,14,23 bad 244:16 baggage 240:1 Bakowski 125:1 balance 26:21 29:15 107:25 193:4 232:22 233:1 243:16 253:22 254:3 257:22 ball 243:12 Banco 12:8 18:20 30:16 31:1 32:6,7,16,19,19 32:24 33:1,2 35:7,9 35:15 209:25 bank 34:22 182:5,17 185:21 232:19,22 243:17 bankrupt 37:9 bankruptcies 6:8 bankruptcy 1:1 3:25 4:4 5:25 6:5,10 7:21 29:3 37:6,14 50:11 68:22 69:11,12,17 80:14 91:4,21 93:6 103:15 127:18,22 128:12 180:13,24 181:2,4 182:6,14 185:17,23 186:3 193:22,23,23 197:21 219:19 220:14 247:14 247:18,25 249:6,19 249:22 260:5 bar 241:13 bargain 183:25 222:20 222:21 base 17:13 22:15 80:13 102:4 224:4 245:5 258:12 based 16:18 64:22 80:13 85:24 87:18 105:19 110:5 120:10 122:7,9,17 134:23 144:9 156:24 167:18 170:19 186:21 195:9 195:12 204:23 207:7 208:1 216:18 219:25 226:25 246:19,23 256:8,19 257:14 260:16 basically 57:22 58:5 69:15 71:22 74:13,20 81:2 84:19 86:21 87:24 88:25 89:8,18 89:21 90:8 104:12 140:13 241:22 basis 65:14 101:16 119:12 121:18 156:22 202:24 212:9 242:16 250:12,19 256:9 258:14,18 261:2
--	--	--	---	---

<p>bat 238:16 batch 158:3 Bates 150:3 152:16,19 BCD 182:15 bear 185:23 229:8 bearing 62:18 bears 196:6 beer 231:2 beg 31:22 beginning 59:20 99:14 127:19 190:25 229:5 behalf 3:13 21:10 22:20 24:23,25 27:23,25 31:14 42:7,9,11 60:20 77:20 140:6 148:9 151:11,15,24 173:4 222:14 224:20 229:13 229:15 233:7 241:14 belabor 240:15 241:17 belief 52:25 believe 22:9 24:22 25:7 27:11 29:17,25 32:5 39:5,18 40:5,8 45:11 45:25 47:13,19 52:15 53:9 56:23 57:12 59:13 60:3,5,12 65:17 65:25 67:12 68:13,19 71:2 77:1 80:20 82:22 83:23 87:2 91:14 93:14,22 96:11 97:3 98:4 102:8 107:22,23,23 114:8 114:11,12 119:16 122:2 129:24 141:25 162:20,25 172:1 178:11 181:7 192:6 192:21 212:9 221:11 225:25 226:5 228:11 237:3 242:14 250:9 257:18 259:20 260:2 260:3,16 beneficial 198:1 beneficiaries 16:5 41:12 186:12 187:12 190:3,5 194:25 199:3 beneficiary 11:3 15:22 16:3 21:2 36:17,18,24 182:24 187:7 189:23 189:24 201:10 258:10 benefit 8:12 41:5 186:25,25 222:20 benefits 107:13 best 72:7 73:5 87:14 89:17 112:13 148:7 189:12,22 better 193:15 199:15 199:20 222:21 239:22 beyond 29:5,22 105:13 134:17 160:5 190:8 247:21 257:23 bidder 84:4 bids 84:3</p>	<p>billion 187:25 bills 19:2,3,4 binder 169:15 bit 139:5 180:2 199:7 blame 215:2,3 blamed 120:4 214:22 blatant 246:6 block 150:12 blockage 98:10 Bloomington 20:8 40:15 204:22 207:19 207:21 223:15 224:6 board 58:8,17 182:22 234:9,10,11 bodies 109:14 body 109:13 Bohan 1:13 18:10 23:22 25:10 26:15,17 31:8 32:10,21 33:24 35:12 37:16 38:16,18 39:20 44:25 47:3,8,9 48:15,18 54:18 90:22 90:24 112:7 113:13 113:24 114:7,21 115:1 119:16 122:16 155:25 156:1,9 157:2 157:23 158:7,9,17,25 159:2,6,19 160:11 161:1,3 163:19 164:7 164:9,13 165:3 176:12,13,19 178:24 179:5 225:13,20,25 226:4,9,15,25 227:21 227:25 228:10,17 232:10 235:23 236:1 236:4,16 240:21 251:23 252:19 260:22 Bohan's 256:1 bolstered 218:20 book 240:10 borrower 49:1 bottom 90:9 boxes 152:24 boy 184:14 branch 84:13 break 63:11,12 brief 5:19 63:13 116:2 116:25 117:1,6 122:24 165:5 179:7 219:12 briefly 55:4 123:14 132:19 bright 10:8 bring 81:6,8 82:22 83:8 93:20 96:8 102:16 106:19 121:10 181:21 186:2,18 243:25 bringing 93:24 broad 69:22 184:19 brought 7:20 190:20 191:4 260:5 Brown 59:22</p>	<p>budget 83:20 95:9,12 218:24 building 32:15 60:13 78:12,14,20,22 81:11 188:19 233:10 235:2 243:21 244:13,14 built 21:22 bunch 158:2 burden 8:7 160:15 161:21,22 162:12 179:2 208:20 213:3 220:11,12 232:3,7 237:17 241:9 248:8 248:15 258:20,21 bureau 56:24 62:22 92:5,10 123:22,23 124:20 126:7 burn 96:22 business 5:9 11:24 20:15 21:7,25 30:11 31:21,24 36:10 48:10 55:18 65:4 113:6 114:13 180:3,5,7,8,12 180:12,16 181:1,2,3 181:12 182:7,8,9,13 182:20,21 183:10,10 184:4,7,10,16,16,18 184:22 185:3,4,4,8,20 191:16 194:1 197:23 198:5,8 201:3 202:24 221:1 229:6 230:15 234:4 235:13 236:8 251:3,5,7,8 252:10,14 252:18 253:3 254:2 255:8 260:3 businesses 233:23 B.R 182:5,16 219:14,18 220:13,15 245:20,22 247:5 248:4 254:21 254:22 255:17</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>c 99:20 115:17 CAAPP 61:15 62:2,10 62:25 63:2 65:19 66:15,16,23,25 67:2 67:24,25 68:10 74:5 74:22 77:4,14 79:5 96:1 111:4,8,12 113:2 113:4,5 122:20 124:11,12,15,22 125:17 126:19 128:15 128:21 129:23 131:7 131:9,21 132:3,23 133:23,25 138:17 139:8,10,25 142:7 147:14 155:2 157:18 161:4 163:3 164:14 167:11 176:6 177:10 226:14,23 227:5,8,20 calculate 89:8 calendar 27:7</p>	<p>call 5:18 54:2,15 63:12 109:14 110:24 123:1 126:1,22 133:5,14 148:8 159:12 171:11 171:12 176:20 177:1 213:5 called 3:21 7:15 54:1 208:7 213:1 236:21 calling 61:14 122:21 calls 93:20 94:12 96:8 163:20 cap 44:15,16 capabilities 164:24 capable 45:9,12,25 87:11 capacity 5:24 6:2 70:4 81:8 84:1 85:25 86:7 86:12 94:22 96:4 103:1 186:14 188:14 capital 191:13 197:24 209:15,16 224:1 capricious 246:20,22 card 148:5,8,11 177:23 178:8 care 48:14 58:13 83:18 194:3 carelessness 227:15 caring 250:14 carried 74:19 carry 182:21 185:5 carrying 182:9 184:18 240:1 case 3:14,18 7:21 8:9 12:7 31:10 44:22 47:12 50:8 54:1 68:22 69:12 91:4,21 95:24 96:3 103:15 121:16 138:10 144:24 169:7 181:19 182:4 182:17 185:21 190:6 190:25 193:22,23,23 198:2 212:18 213:6 213:17 220:1,10,13 220:14 222:2 241:14 243:15 244:18 245:20 245:21,25 246:12 247:23 248:2,3,10,12 249:15,22,25 254:20 254:25 255:1,5,13,15 255:18 cases 14:5 115:8 181:18 181:18,18,23 198:3 cash 15:7,10,19 16:17 16:18 27:2 28:25 35:3,4,25 36:4,4 189:2 195:8,9 196:17 202:6,22 210:18,22 213:12 237:8 cast 118:24 castigated 250:12 Casual 254:21 255:15 catches 74:22</p>	<p>catch-all 74:21 catch-up 218:18 Caterpillar 60:13 213:22 cause 44:9 261:14,17 caused 44:16 92:2 113:20 causing 249:10 cents 86:2,5 certain 66:24 69:8 79:7 100:1 147:13 166:2 214:21 230:21 231:15 certainly 6:24 81:21,25 94:5 107:19 121:2 130:4 184:14,23 190:6 199:4 212:8 213:15 215:23 218:24 228:1 234:18 241:11 259:14 certificate 140:10,12 certificates 182:25 197:25 certification 97:21 certifications 55:19 62:4 certified 146:6,10 147:4,16,19 148:5,12 177:11,21,24 CERTIFY 261:16 challenge 205:25 207:8 207:17 challenged 207:7 223:18,21 challenging 226:24 chance 75:24 change 8:8 26:8 80:12 80:21 106:18 128:23 128:24 129:17,20 130:7 151:25 165:23 166:6,23 173:7 209:6 246:25 256:25 changed 133:1 changes 106:14 134:22 134:25 135:1 211:16 changing 8:11,11 234:23 251:25 chapter 6:7 14:3 18:4 19:20 29:4,22 39:13 39:14 47:11,17,21 92:24 193:24 209:19 209:20,22 210:7,13 210:20,23 212:10,18 212:20 213:14 214:5 214:12,20,23 215:2,3 215:10,15 247:15,22 248:6,20 250:3 charade 231:25 charged 114:10 115:10 charges 115:2 chart 88:20,22 check 5:13,19 152:24 225:19</p>
---	---	---	---	---

checked 60:16 chemical 208:22 Chicago 1:4,20 188:20 chief 54:1 255:8,12,18 chiefly 172:22 China 211:6,11 212:5 212:10 Chiplease 7:23 8:15 10:23 11:1,3,13,25 12:14,15 14:15,18,23 15:12,21 16:2,14 18:20 20:17,22 21:13 21:20,25 22:23 23:12 23:16 24:5,12,20,23 25:5,15 26:18,21 27:22,23 28:6,9,19 29:2,7,10,20,24 30:13 30:25 31:11,14 32:23 33:3,10,14 34:2,12 35:3,6,13,14,17,23 36:3,16,18,24 37:17 37:19 38:4,19,22,22 39:2 40:13,25 41:6,13 41:20,23 42:6,7,17,20 43:12 50:16 51:11,23 52:8,19,21 183:13 186:10,12 187:9,21 189:6,8,15,21 190:23 191:1,20 192:9,11,11 194:8 196:4 202:9,21 213:10 229:12,15 230:7,14 231:6,11 232:5,20 234:5 235:4 235:6 238:11,13 242:18 243:22 Chiplease's 11:24 22:10 23:24 28:22 29:15 31:20 35:20 36:14 50:22 189:3 191:2 choose 196:6 202:19 242:19 chose 258:4 chosen 242:6 Christmas 97:12 106:7 106:11 Circuit 151:9,14 circumstance 43:23 257:1 circumstances 42:24 44:1 115:23 116:18 118:2 119:19 138:1,3 190:12 216:11 220:1 231:19 257:7,9,11 citation 181:6,15 197:20 216:23 219:16 255:14,15 citations 220:2 cite 118:16 248:2 254:22 cited 155:14 260:22 Citicorp 187:23 188:2	city 1:15 57:19 58:6,7 59:21 60:5 61:6,9 62:19 100:9,16,21 159:10 city/county 61:19 92:8 95:10 107:24 city/county's 60:23 civil 55:10 115:19,20 116:4 claim 48:3 91:12 242:11 claims 182:2 clarification 5:5 158:5 clarify 3:7 9:13 10:6 51:19 53:19 58:18 59:8 62:7 157:23 165:13 167:8 Clean 66:17,20 67:4 96:1 101:8 108:2 110:9 124:11 131:3 cleaning 12:15,18 28:20 96:1 202:7 clear 62:8,13 112:15 145:7 159:17 187:10 189:5 200:18 222:3 226:22 248:20 clearly 249:25 clerical 133:6 clerk 3:1 49:17 63:16 117:2 143:5 179:8 197:20 client 119:9,9 223:9,12 223:23 224:7 230:20 239:9 clients 47:2 70:19 close 195:21 closed 58:11 222:7 closing 44:20 Coast 13:8 code 137:17 180:13 247:14 cohorts 238:2 collateral 59:14 collect 7:9 74:5 84:19 collected 74:14 79:18 89:9 96:2 collection 20:19 21:15 44:11 45:5 57:2 60:6 60:10 62:24 69:1,14 69:24 70:10 73:20,21 75:2,4,8 78:19 79:21 83:16,18 87:1 88:12 92:12 95:13 106:18 120:20 collectively 234:12 collects 117:18 college 55:5 Colony 243:20 color 169:16 combination 209:11 combined 207:13 come 36:3 124:21	126:4 133:12 156:9 165:23 166:1,13 178:22 181:7 188:6,8 188:12 195:10 213:6 215:20 232:14,16 239:24 244:4 253:12 256:19 258:23 259:6 comes 4:19 89:24 143:4 188:18 232:21 235:5 comfort 8:25 190:7 comfortable 9:16 comfortably 114:12 coming 4:4,6,9,11 6:12 15:16 70:21 138:22 158:2 189:5 202:8 206:13 221:21 241:8 243:1,9 250:5 comment 134:16,23 194:20 246:13 comments 134:6,19,20 134:21,25 168:7 Commerce 86:6 commercial 182:10 233:9,10 246:18 commission 86:6 207:3 207:3 commissioned 207:4 commitment 21:9 70:21 71:19 171:3 172:2 187:23 189:16 commitments 15:2 218:23 committed 42:21 231:20 251:1 committee 58:17 commodities 212:2 common 5:6,9,16,18 6:1 137:16 180:17,19 180:21 198:7 260:3,4 commonly 57:3 Commonwealth 19:1 communicate 58:24 communication 14:8 246:5 communications 59:4,9 64:21 community 249:11 251:5 companies 24:6 28:20 41:2 234:15 company 27:18 34:24 39:25 59:23 60:1 89:13 91:3 209:4 210:22 213:10 222:25 232:25 233:2,8 240:5 251:11 compare 104:10 comparing 152:7 compensate 30:6 competent 250:14 complain 183:20 complaint 48:5,9 118:4	complaints 13:25 complete 133:10 135:2 139:6 140:15 231:13 completely 46:15 190:8 234:16 completeness 133:5,10 140:1,10,12,12 142:7 completion 254:11 compliance 46:5 50:8 50:16 62:4 69:1,9,13 70:1,20,21 71:19 76:19 79:11 80:16,21 81:3 82:23 83:8 84:18 94:22 96:3 101:8 102:17,24 108:2 116:15 118:23 124:8 126:3 127:3 129:3,10 130:9 139:1 154:10 158:12 159:22 162:24 164:16,24 165:25 166:1,9,12,13 166:14 169:24 171:4 171:7,17,23 172:2,3,6 172:18 179:15 203:23 221:2,20 229:1 242:6 244:23 compliant 247:3 comply 69:5 99:10,20 99:21 121:3 179:18 189:14 191:14 197:3 208:15 216:12 221:3 249:7 256:23 complying 194:9 196:13 concentration 239:15 concentrations 74:12 89:6 concept 180:20 182:24 222:18 concern 6:25 68:25 185:14 239:21 260:15 concerned 26:12 201:5 256:12,13 260:10 concerning 20:18 61:12 71:13 255:6 conclusion 6:12 16:19 57:10 121:21 156:9 249:4 256:20 concrete 242:4 condensate 69:8 98:11 98:15,23 condition 10:8 138:15 183:18 232:5 conditional 198:16,25 254:19 conditioned 198:22 conditions 17:11 121:4 183:23 199:5 246:16 255:21 256:25 conduct 30:10 31:23 95:4 113:6 conducted 47:21 59:20	82:20 118:14 230:15 conducting 180:10 183:9 conference 63:12 confident 190:1,3 confirmed 192:7 210:24 218:6 conflict 61:7 confuse 245:4 252:20 confused 204:17 confusion 142:17 Congress 44:18 45:2,5 220:19,22 conjecture 186:6 connected 104:8 Connecticut 248:24 connection 61:22,23 connectivity 181:17 Connolly 2:10 3:8 4:3 7:17 9:6,14 15:9 17:5 17:18 21:5 22:14 37:4 38:21 39:7 42:12,14 43:6,18 44:1 50:10 53:19 59:2 72:23 74:16 79:25 81:15,22 82:6 84:12 85:19 102:22 104:8 111:3,7 150:22 161:4 161:12 162:9,17,20 163:14 175:10 177:2 177:3,5,8 178:18 192:5,21 193:19 194:12 204:20 207:15 208:21 211:2 214:16 214:25 215:7 218:12 228:2 230:25 237:7 238:1,1 239:21 240:16 241:7 242:21 243:4 250:10 251:19 251:23 252:10,16 253:5,7,7,9 258:4 Connolly's 17:9 38:7 43:11 45:20 53:23 62:17 82:11 102:3 105:4,16 113:16 122:22 160:13 161:8 162:8 195:12 204:14 205:15 208:9 218:6 237:6 238:15 245:17 252:24 255:12 Conservation 247:11 consider 21:25 120:5 158:11 159:21 160:23 164:15 174:1 218:3 259:11,14 consideration 6:12 40:24 120:2 217:17 227:5 234:19 considered 66:20 128:18 137:1,9,14 154:9 155:18 181:2 consist 59:17
--	---	---	---	---

<p>consistent 45:23 142:14 consistently 44:19 constitute 230:19 constitutes 130:12 446:14 constraints 17:3 193:25 249:6 construct 84:8,10 constructed 97:18,22 construction 20:23 21:14,17 56:22 57:1,5 97:18 113:5 137:24 155:15 219:25 220:23 constructions 223:7 consult 124:19 Consultants 251:11 Consulting 240:7 contain 114:11 165:24 contained 65:11 containing 191:25 contains 78:22 contaminant 174:3 218:5 contaminated 70:11 92:16 contemplated 245:17 contend 234:15 contested 82:4 context 4:20 120:16 157:7 247:25,25 248:5 contiguous 67:5,6 contingencies 43:8 244:18,19,24 245:1 contingency 42:25 43:1 99:4 contingent 137:15 continually 44:21 continue 79:12 133:7 140:15 251:3 253:19 continued 63:17 69:15 93:1 continues 3:24 110:10 continuing 55:22 56:1 82:25 83:3 contract 6:23 13:5 41:16 60:2,6 105:17 186:5,20 187:7,12 197:1 235:10 246:6 254:7,9 255:4 258:16 261:4 contracted 240:5,6,8 contractor 56:18 61:7 75:7 89:14 contractors 60:24 61:5 66:5 71:20 82:21 contracts 8:16 22:18 23:12 40:16 41:3,8,25 42:20,22 43:5,16 44:2 45:10,16,22 61:4 163:7,8 184:12 187:6 191:18 192:18,19</p>	<p>194:10 196:14,15 197:9 203:10,12 208:17 223:14 229:2 229:12,17,24 230:13 230:24 231:21 236:14 237:9 239:3,9,22 240:3,12,17,23 250:23 257:15 261:4 contractual 7:6 195:23 196:13 contractually 242:10 contract's 7:12 contradicted 208:6 249:14 contrary 121:21 184:5 232:15 237:20 251:14 255:3,25 contrast 158:21 contribute 16:3,6 24:6 24:15 93:1 control 21:15 48:7 74:11 75:2 137:16 183:13 214:10 230:4 234:12 235:11 236:22 controlled 86:6 234:7 controls 235:10 conversation 3:5 conversations 20:4 59:3 conversion 20:25 102:20 155:7 209:13 247:4 251:13 260:14 converted 84:14 206:3 245:10 conveyance 94:21 convinces 182:19 Cook 151:9,14 Cookinghan 120:15 copies 66:1,3 70:13 71:3 72:12,13 126:9 copy 25:18 49:8,17 66:6 68:15 72:10,16 73:4,15 76:16 100:12 104:7 131:19 132:2 142:2 168:23 169:4 170:11 cord 252:8 core 112:22 246:25 corner 231:2 corners 171:7 Corp 34:22 220:13 231:22 247:5 254:21 corporate 3:18 corporation 1:3 3:2 4:10 7:5,14,16,23 11:8,12,14 12:5 21:3 21:6 22:5,17 27:10 34:21 39:13,15,17 53:21 63:17 131:5 132:10,12 141:6 175:14,15 182:13 183:5,14,16 188:4,4</p>	<p>188:16 189:3,16,21 190:20 192:8 198:18 203:9 213:20,21 248:4 254:25 corporations 180:6 190:10 correct 5:7 10:23 11:8 14:25 16:22 23:7 29:5,11 30:17 32:25 35:7,25 36:1 37:1 41:21 42:15 47:22 53:6 56:13,14 58:20 58:21 66:9 67:1,11,23 67:24 73:6 74:25 75:3,4,22 78:24 79:9 84:7,9 86:8 91:5,6,22 92:3,6,14 93:21,24 95:11,24 96:10,14,15 97:2,3,8 98:1,2,7,8,12 98:14,17,22 99:2 100:3,4,11,14,17,18 100:22 101:6,7,11,13 101:17,19,22 102:1,6 102:17 103:12,22,23 104:15 105:13,14 106:8 124:2 125:5,11 125:12 126:21 131:11 131:22,23 132:3,13 132:14,16 135:7,15 135:16 137:10,11 138:13 140:9 141:4 142:9,22 143:20,21 144:2,3 147:17 149:6 149:11,16 150:24 163:1 166:6,7 167:1 167:13,14,16,22,25 168:25 169:6,11,23 170:3,7,13,25 171:19 171:24,25 172:4,16 172:19,20 173:16 174:4 175:11,12 180:5 205:15 229:7 235:8 245:2 250:2 correction 98:15 correctly 3:6 64:3 74:15 81:9 133:19 215:14 228:21 correspondence 59:13 72:13 76:5 corroboration 233:21 cost 81:16 82:16,20,22 83:8 84:2 93:23 94:24 95:1,5 98:1,20 99:10,19 106:19 207:11 costs 206:4 207:10 counsel 80:5 83:12 110:1 144:14 146:5 168:20 229:20 241:21 count 143:18 152:16 181:19 212:25 counter 13:13 201:19</p>	<p>counter-parties 6:17 9:1 13:5 43:16 186:2 186:15 189:13 255:3 258:6 260:6 261:4 counter-party 163:8 191:12 197:2 222:1 228:20 240:18 253:17 Country 100:17 county 1:15 57:20 58:6 58:7 59:21 60:5 61:6 61:9,20 62:19 100:12 100:21 137:19 151:9 151:14 couple 85:9 157:3 course 55:17 60:4 125:24 131:10,25 140:2 149:5 163:13 212:18 225:7 248:10 court 1:1,18 3:5,17 4:8 4:19,25 5:3,13,22 6:11,24 8:1,20,24 9:9 9:18,23 10:1,9,12 11:15 12:24 16:5 18:12,14 19:12 25:18 26:2,7,11 31:6 32:17 35:10 37:11 39:16 44:5 47:5 48:17 49:5 49:9,15,19 50:20 51:1 51:5,10,15,19 52:3,11 52:17 53:3,13,16,25 54:5,8,12,17,20 58:18 62:16 63:9,18,23 64:2 64:5,18 65:7,10,13 68:12 72:1 74:2 77:9 77:11 79:4 80:25 81:22 82:9 83:3,11,14 85:18 88:3 90:16,19 90:22,25 91:12,16 93:3,6,7 94:3 106:1 106:23 107:4,15,18 108:17 109:2,10 110:4,17,22 111:9,11 111:25 112:4,11 113:21 114:3,18,22 115:16 116:1,16,24 117:2,3,9 118:8 120:8 121:14 122:18,23 126:15 127:8 128:1,7 128:10 129:22 130:12 136:7,13,16,19 142:11 144:21 145:7 145:15,18 146:14,17 146:23 147:6,25 148:24 149:4,7,12,17 149:21 150:1,4 151:9 151:14 153:7,11,23 154:5,11,21,24 155:24 156:6,21 157:22 158:15,20 159:4,15 160:1 161:11,19 162:9,18 162:25 163:13,17,19</p>	<p>164:2 166:16,23 167:2,4 168:3,15,18 169:4,10,12 170:6,8 170:12 174:9,13 176:1,11,14,22,24 177:3 178:17,20 179:1,6,8,9 180:1,7 180:15 181:13 182:3 182:6,19 183:14 184:1,14 185:3,11 186:8 187:19 189:11 191:10,24 192:3,14 193:4,9,12,17 194:2,7 195:14,19 196:23 197:19 198:4,19 199:6 200:12,17 201:15,22 202:1,3,12 202:17 203:7,21,25 204:3 205:13,17,20 205:24 207:23 208:11 208:13 209:8,21,25 210:14,16 212:13 213:25 215:25 216:22 217:1,3,6,10,13,15,22 218:9 219:9,14,16,19 220:6,17 221:5,5,10 222:9 223:17,20 224:11,16,21 225:1,9 225:11,14,19,22 226:2,7,12,16 227:7 227:22 228:7,16 232:6,21 235:21,24 236:2,15 240:14 241:16 243:4 244:8 244:10 245:7,22,24 245:25 246:2,4,9,12 247:6,8,13,17 248:16 248:21 250:25 252:12 252:22 254:23 255:5 255:14 256:12 257:2 257:5,6,9 258:21 259:1,9,13,19,23 260:2 261:9 Courthouse 1:19 courtroom 231:7 239:24 court's 3:1 247:18 cover 59:24 69:19 71:13 92:9,11 95:11 95:17 97:8 116:3 120:10 covered 75:3,5 covers 67:22 68:1 co-lenders 234:4 co-review 126:1,5,7 CQA 57:4,5,11 69:6,10 97:13,15,20 106:7 create 184:19 created 5:10,11,14,21 29:21 182:8 186:24 187:2 203:7 230:11 creates 119:17 180:16</p>
---	--	---	---	---

201:16 creating 145:10 204:15 credibility 234:16 credibly 207:6 208:1 232:24 246:10 credit 21:24 205:5 creditor 37:9 50:14 184:8 creditors 6:17 7:1,8 182:21 credits 23:1,6 30:3,7,10 33:19,25 34:1 criminal 115:2,8 criteria 137:20 cross 75:6 107:3 cross-examination 23:21 91:1 157:1 167:5 208:7 cross-examine 121:12 245:3 cross-referenced 67:3 CRRA 249:25 CSR 1:18 261:16 cubic 87:16 cure 81:16 82:17 101:4 195:24 cured 244:24 current 12:21 14:2 26:21,23,24 27:4 28:9 28:12,16,23 57:17 58:3 68:9 69:22 70:7 83:17 87:23 97:12 101:17 111:20 123:23 124:10,11 152:8 155:1 176:6,8 253:1 currently 28:18 33:1 33:18 38:4 55:2 59:16 60:8,15,20 69:25 76:18 83:20 84:16 86:14 123:11 123:12 129:23 138:20 153:12 165:9,11 169:24 curve 89:16 96:17 102:21 110:11 curves 206:25 customary 240:20 cut 228:21 CX 2:4 C&L 13:20 C-A-A-P-P 66:15	damaged 69:20,20 71:22 danger 79:17,19 dark 89:10 data 98:22 date 35:3 36:3 44:20 68:7,7 127:17,21 134:14,17 135:13,14 135:22 138:11 141:11 141:18 142:8,10,13 142:14,18,22,24 143:2,5,17,18,20 144:1,6,9 145:10 146:12 148:21 167:12 167:13 177:13,17 223:14 dated 71:8 72:21 75:15 dates 57:22 210:9 David 1:13 day 79:16 143:6 177:16 222:6 days 14:13 24:14 78:3 79:1 134:14,16 143:8 185:7 202:9 213:18 222:1 deal 58:22 61:9 63:4 190:7 195:19 199:7 245:12 dealing 5:4 7:24 16:22 58:13 121:24 190:25 227:17 228:20,22,23 230:22 231:15 dealings 80:4 deals 63:2 67:10 73:20 74:4,11 217:17 dealt 8:24 46:13 99:25 182:4 197:17 Dearborn 1:19 13:1,14 14:4,12 188:16 debt 37:19,22,23 38:1 debtor 1:5 3:9,13,19,23 3:24 4:12 29:5,23 36:15 37:14,17 39:14 39:15 48:25 182:14 209:21 210:19,25 220:20 228:13 242:8 247:9,23 debtors 220:11 247:15 debtor's 4:1 247:19,20 248:7,9,13 debts 3:13 decay 110:9,11 December 90:8,9 142:24 decide 70:25 decided 48:4 176:20 231:9 253:5 deciding 41:23 decision 41:7 149:3 182:6 202:25 229:13 229:14 261:3 decisions 22:11 23:17	decision-making 40:19 declarations 248:7,13 decline 186:10 188:25 declined 93:8,9 186:4 declines 186:12 decomposition 89:25 decrease 89:22 110:11 decreases 90:1 110:13 deem 144:10 148:15 173:4 deemed 148:17 167:12 167:24 default 256:7,10 defaults 44:2,7 45:14 45:18 81:16 82:17 101:5 239:8 242:12 242:17 defendant 13:24 defendants 13:13 deficiencies 98:1 135:8 166:3 define 52:20 defined 53:1 136:2 defining 52:18 definitely 102:25 definition 198:4 degrade 69:15 degree 55:6,9,11 121:23 123:17,18 197:10 Delaware 38:23 39:3 deliver 221:25 delivered 75:21 87:10 178:13,13 demonstrate 165:25 167:10 demonstrating 166:13 demonstration 204:6 demonstrative 195:11 denied 138:19 170:22 170:24 238:13 deny 138:17,21 160:10 164:20 171:14 221:22 227:11 258:22 denying 121:19 department 100:10,15 149:13 depend 237:7 dependent 87:7 129:3 depends 42:23 238:21 255:8 deposit 236:22 deposition 10:7 24:10 31:10,13,16 34:8 94:14 95:15 97:1,5,25 98:25 99:13 104:8,21 111:23 112:16 232:18 derivation 204:13 derivative 186:18 describe 17:15 described 228:21 description 129:13	design 84:15 97:14,17 97:19 101:6 106:11 designate 40:14 41:7 41:25 229:15 231:22 designated 41:2 136:23 137:1 150:21 151:4 designation 201:9 designed 44:24 57:8 97:23 106:16 220:18 designee 41:25 225:4 231:17 desirable 107:6,9 desk 111:24 235:14 despite 50:15 247:10 destroy 96:2 detail 259:20,22 details 38:12 Deteriorate 93:3,4 deteriorated 92:24 determination 122:11 133:5,10 140:1,13 142:7,23 144:16 145:24 146:1,2 152:4 152:6,10,12 153:24 164:19 167:15,18,18 168:16,18 173:25 200:1 227:23 257:8 determinations 117:14 218:1 determine 16:13 102:9 129:2 130:17 133:16 137:7,23 140:16 162:3 178:1,12 183:4 258:3 259:8 determined 16:16 54:17 78:10 133:9 140:14 142:4,21 143:2 161:16 212:16 246:15 256:2 determines 125:17 determining 52:5 127:4 160:23 169:2 211:17 248:5 detriment 8:11 development 20:19 55:25 252:11,14,18 devices 74:18 de-designate 41:24 231:21 de-designating 41:15 difference 46:24 82:10 96:19,20 203:4 209:3 211:5 255:20 different 32:20 52:2 56:6 87:21 111:16 122:11 126:24 139:5 147:7 162:7 204:16 211:14,16 217:7,8 222:17 230:9 239:6 245:4 259:6 difficult 213:3 216:11 218:23 243:11	difficulties 108:3 193:21 210:22 difficulty 10:8 98:19 203:7 222:12 dig 241:24 digit 178:6 diminishes 234:16 direct 10:14 20:18 23:23 28:5 54:22 63:20 64:6 112:9,10 123:5 132:24 140:6 165:7 177:6 187:8,9 directed 54:11 160:4 164:4 227:19 directing 21:4 direction 221:9 directly 40:9,11 61:1,8 79:24 87:17 89:4 100:23 113:16 125:1 143:4 160:12 229:8 237:21 director 7:18 10:25 11:7,9,11,13 27:16 40:4 100:10,15 134:12 183:12 directors 234:9,10 disabused 164:5 disadvantaged 224:9 disagree 6:22 185:1 disagreement 102:4 discharge 45:21 disclosed 85:16 118:10 discourse 194:1 discover 231:7 discrepancy 91:11 discrete 121:24 discussed 9:13 67:21 109:12 130:7 240:15 240:15 244:1 246:12 discussing 94:15 discussion 9:17 84:11 93:11 97:10 106:5 109:18 discussions 82:21 display 63:23 disposal 58:8 59:23 60:1,7 62:24 70:10 199:2 dispose 70:5 81:9 disposed 29:19 74:14 disposing 227:18 dispute 9:19 111:12 disputes 4:21 disregard 246:6 disrepair 95:5 dissipate 206:24 distinct 182:22 distinction 182:7 district 1:1 219:19 220:15 245:21 247:6 247:7,8 diverts 180:21
--	--	---	---	---

division 1:2 56:22 144:14 146:4 168:20 document 24:21 25:12 25:19,21,21 26:4 51:22 52:14,16 57:11 64:10,16 65:18,19 67:8 71:7,9 72:5,24 73:3,10,25 75:19,20 76:11,25 77:2,3 88:7 90:6,15,15 121:15,16 130:22,23 131:2,24 136:25 139:24 140:2 140:24 146:8,15,19 147:3 195:11 244:22 documentation 61:21 85:17 131:10 145:14 190:11 243:18,23 documents 58:16 62:6 66:1,4,4,12 70:16 100:23 108:21,25 116:6 120:6 122:14 126:13 131:13,16 136:22 147:3,11 151:21 168:2 171:6 204:13 210:10 232:21 233:19 249:3 doing 7:13 40:22 45:25 74:7 153:1 185:9 218:17 230:4 252:10 252:14,17,18 dollar 235:18 dollars 35:24 83:21 188:11 202:8 233:18 Doolin 1:18 261:16 double 67:17,17 doubt 15:12 181:21 184:24 239:21 draft 124:18,19 126:3,7 133:22 drafted 236:10 draw 238:10 drawn 199:17 draws 182:6 drip 69:8,9 87:5 98:23 Drug 220:13 drums 92:16,18 dry 12:15,17 28:20 202:7 dual 63:3 dubious 114:22 duct 209:6 216:7 due 98:10,20 112:16 143:16,22,24 145:9 164:2 177:16,18 180:1,4 200:4 208:18 211:4 216:15 221:3 255:11 duties 56:19 66:8 70:17 78:6 88:15 124:14,15 131:11,25 140:3 151:8 187:4 246:3,6 duty 115:6,7	dwelt 237:19 DX 2:4 E E 2:1 earlier 3:17 37:21 50:5 58:25 67:21 70:12 71:14 86:7 96:17 115:13 117:25 148:25 156:7 157:25 185:14 257:2 earning 238:10 easier 107:25 150:5 easiest 208:19 easily 238:19 Eastern 1:2 245:21 easy 215:22,24 eating 211:7,8 EBIDA 202:13 Ed 125:1 Edison's 19:1 edition 246:13 education 55:22 56:1 educational 55:5 123:14,16 EEOC 117:14 effect 113:22 127:22 148:19,20 185:22 206:1 effective 84:18 253:11 257:16 258:5,15 260:7 efficiency 103:3 efficient 209:14,14 effort 160:4 efforts 193:19 216:10 either 27:5 33:14 134:22 137:24 157:6 171:22 201:9 202:1 215:24 232:5 233:22 elaboration 26:7 electric 19:1 23:1,3 electrical 87:19 123:18 electricity 87:19 89:5 102:5,20 103:6 206:3 211:3,25 245:11 element 161:24 elements 93:18 133:25 247:3 elicit 122:24 elicited 214:15 eliminate 112:21 emergence 212:5 emerging 212:6 emissions 46:23 137:22 employ 175:4,7,13,21 employed 39:14 55:2 56:11,16 91:4 123:11 123:12,19,20 124:1,3 238:1 employee 38:21 174:20 174:25 227:12	employees 17:22,25 39:7,8 43:6 80:8 122:13,14 160:20 165:1 175:14 193:20 230:3,16,17 employment 9:15 57:9 253:1 enable 259:2 enacted 63:1 encouraged 81:7 94:6 ended 208:4 ends 102:24 energy 23:6 104:14 155:7 188:22,25 211:7,8,10,18 212:8 212:23 244:1,6 245:16 251:11,12 enforce 160:8 186:4 190:4 197:7 256:14 258:7,17 enforceable 134:8 196:7 201:17 254:16 256:22 enforced 235:12 enforcement 9:1 103:18 116:4 119:6 119:11,13,13 216:16 257:16 enforcing 258:5 260:8 engage 4:22 engine 60:17 65:20 67:11 70:4 75:3,6 78:2 81:6 83:19 84:1 86:7,11,14,20 87:22 87:23 93:20 96:4,8,13 96:19,21 103:10 105:3 206:9 251:18 engineer 75:21 106:13 133:21 166:3 engineering 55:10,11 55:17,20 57:24 58:9 89:13 97:11 104:5 123:17,18 engineers 56:11 60:23 70:19 104:19,22 124:17 125:3,25 133:13 138:20 216:5 engines 60:13 66:19 67:19 78:9,23,24 79:1 79:6 81:9,10,12 85:25 87:9 89:8 93:24 95:24 96:6,9,13,18 105:6,8,9,10 106:20 113:19 208:9 245:12 245:16 ensure 124:15,21 entail 124:13 enter 164:19 184:12 185:9 221:16 entered 24:13 28:7 60:2,5 119:6 156:24 160:9 170:6,9,12,25	192:17,18 193:16 222:22 229:3 entering 222:23 Enterprises 245:20 entire 84:19 98:17 209:9 217:23 entirely 163:21 214:1 214:10 231:12 253:1 entities 5:4 7:5 14:2 35:13 164:25 165:1,2 202:2,21,22 212:16 214:10 230:5 231:23 239:10 241:23 244:4 257:24 258:2 entitled 200:9,10,13 261:17 entity 3:24 7:18 8:17 9:15 22:21 35:13 39:22 50:17 137:15 137:22 166:19,20,24 180:16 185:16 191:12 191:14 193:15 203:18 215:12 218:24 229:23 242:20 247:1 253:21 254:2,10 255:1 256:21 entity's 255:7 entries 147:17 environment 174:4 212:23 218:5 environmental 45:24 46:5 55:3 56:23 70:19 71:7 72:22 75:15 120:13 123:13 123:17 124:8 133:3 136:2 159:22 164:23 168:17,22 169:21,22 216:13 217:18 218:15 227:6 228:4,25 239:12 240:7 246:24 EPA 63:1 66:5 70:2 71:18 109:12,12 123:20 130:10 134:5 135:3,4,4 247:18 equation 110:10 equipment 122:1 equity 40:7 equivalent 105:10 243:10 equivalents 35:4 36:5 errors 134:6 escrow 199:15,16,18 especially 83:25 87:3 essence 255:1 essential 161:24 257:14 essentially 77:25 159:18 237:15 establish 161:21 162:21 163:2,6,15 181:25 established 228:25 estate 4:1,5 16:4 18:17 19:4 20:1 36:11 48:2	48:7 198:1 233:10,13 235:4 244:16 estimate 84:22,24 87:14,18 89:17 97:1,7 97:24 98:24 101:9,12 101:16,24 104:9,18 104:23 105:4 106:19 106:22 110:12 estimated 87:21 93:23 estimates 82:20 83:7,10 83:12,15,18 95:5 101:19 104:10 estimating 98:20 104:6 EUGENE 1:7 evaluate 98:21 133:6 134:21 144:15 evening 251:17 event 22:18 23:11 26:13 79:10 118:25 119:5 183:11 186:4 192:25,25 198:10 events 17:14 eventually 140:22 144:11 evidence 54:13 65:5 114:19 118:24 119:25 144:15 145:8 149:8 167:19,21,23 168:1 183:21 201:4,25 202:1,5 207:19 222:3 222:5 224:24 225:8 232:17 233:15 236:23 237:20,21 244:8 246:2,10 249:2,14 251:15 254:6 257:19 257:23 evidencing 198:1 exact 38:12 68:6 77:25 127:17,21 185:8 exactly 15:24 37:24 41:10 52:24 66:15 105:22 115:9 135:24 171:17 220:6 229:19 238:22 examination 10:14 23:24 28:6 48:22 54:22 63:20 64:6 106:3 123:5 158:16 165:7 176:2 177:6 182:18 example 7:1 44:11 61:3 69:3 109:15 120:9 152:23 244:17 exceedance 239:18,19 exceeding 247:24 exceedingly 243:11 Excellent 63:22 exception 114:2,13,14 115:8 118:1 119:17 119:18 213:21 excess 188:14 exclusion 115:7
--	---	--	--	--

<p>exclusively 194:9 210:12</p> <p>excuse 56:19 57:16 64:13 72:1 128:4 141:7 165:11 257:6</p> <p>excused 53:15 110:21 155:5 176:17 178:19</p> <p>execute 184:12</p> <p>executed 97:20 186:20 236:20,24</p> <p>executive 255:9,13,18</p> <p>exercise 43:21 246:17</p> <p>exert 98:6,9</p> <p>exhibit 49:3,3,18,22 63:7,23,25 64:9 67:10 71:6,24 72:5,19 73:8 75:10,13 76:2,4,22,24 85:1 88:2 93:14 99:8 120:9 130:20 139:21 139:23 142:1 143:19 148:1 149:24 150:2 169:8,10,14 175:25 221:6 235:21,24 239:14 240:9,13</p> <p>exhibits 72:9 146:7 233:2</p> <p>exist 3:25 148:21 260:17</p> <p>existing 84:12 87:3 96:13 113:10 139:8 152:14</p> <p>exists 243:21</p> <p>expanded 198:7</p> <p>expands 247:20</p> <p>expect 63:13 80:11 116:19 119:13</p> <p>expected 113:1 121:25 150:18 257:21</p> <p>expense 35:20 86:25</p> <p>expenses 14:17,19,20 29:4,12,18,22,25 87:2 189:6 207:9</p> <p>experience 80:15 118:12 119:4 208:21 208:22,24,25 209:1 216:6 255:8</p> <p>experienced 222:25</p> <p>expert 77:9 79:3 81:20 81:21,23,25 82:1,3,6 226:19</p> <p>expiration 68:7 135:22 138:11 143:17,18,20 148:21</p> <p>expire 68:3 135:21 139:9 143:9,11 157:16</p> <p>expired 111:19 143:7 143:10 148:23 155:4 176:9</p> <p>expires 68:6 144:13</p> <p>explain 132:25 157:12</p> <p>explained 153:13</p>	<p>220:17</p> <p>explore 260:19</p> <p>exploring 200:18</p> <p>extend 134:16</p> <p>extended 16:21</p> <p>extension 110:13</p> <p>extent 29:12 38:14 41:11 62:18 77:13 121:5 128:1 146:18 153:14 185:19 200:19 200:22 203:6 214:1 245:9</p> <p>extinguished 37:20</p> <p>extract 229:2</p> <p>extremely 215:20</p> <p>eye 10:7</p> <p>e-mail 171:12</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face 152:23</p> <p>facilities 20:20 22:13 124:7 226:21 247:10</p> <p>facility 58:8 60:11 81:3 124:4 137:13,16 176:7 226:18</p> <p>fact 22:16 32:15 46:12 48:4,8 53:5 62:14 73:21 76:14 79:3 81:19 98:24 103:9 111:20 116:6 117:10 117:19 118:3,17 119:12 121:2 149:9 156:16,24 160:15,20 167:11 168:14 170:10 171:16 173:23 183:9 187:2 190:19 193:21 203:15 204:7,20 206:10,24 207:10 209:6 211:11 215:11 215:13 216:3 218:19 218:20,22 219:1 222:2,4,8 235:19 242:10 249:24 250:22 252:20 260:2</p> <p>factor 160:22 168:21 169:2 212:11</p> <p>factored 84:21</p> <p>factors 118:11 164:21</p> <p>facts 120:17 210:9</p> <p>factual 115:20 120:19 246:15</p> <p>fail 46:22 188:2</p> <p>failed 162:21 163:5 237:16 249:6</p> <p>fails 6:15,16</p> <p>failure 46:4,8,9,9 95:24 98:11 121:3 246:25 247:1</p> <p>fair 222:3</p> <p>fairly 161:24</p> <p>fairly 110:12 203:10 239:11</p>	<p>faith 237:15 246:17</p> <p>falling 212:8</p> <p>false 48:10</p> <p>falsehoods 234:22</p> <p>familiar 17:21 64:9 65:17 71:8 72:5,23 73:10 76:9,25 80:17 88:6,20 104:5 127:11 127:12 130:21 139:24</p> <p>family 27:15 35:6</p> <p>far 26:12 86:24 116:13 119:8 181:23 188:14 201:5 202:16 204:24 207:21,24 223:1 247:24</p> <p>farther 223:16</p> <p>fascinating 4:18</p> <p>fashion 149:10 163:1 204:16 207:17</p> <p>fashions 221:14</p> <p>fault 45:17 46:18</p> <p>faults 45:17</p> <p>favor 168:21 169:2</p> <p>feasibility 248:6</p> <p>feasible 244:2</p> <p>features 69:3,8</p> <p>February 1:5 261:14</p> <p>federal 65:5 114:18 227:14</p> <p>fee 147:19</p> <p>feeling 203:19</p> <p>fees 19:17</p> <p>feet 87:16</p> <p>FEIN 3:10,15 4:7 9:15</p> <p>fellows 216:4 250:11</p> <p>Ferris 59:22</p> <p>fess 234:13</p> <p>field 94:12,19 95:10,17 97:7,25 102:13 103:4 103:5 107:9 108:1 110:5 123:22 126:1 209:2</p> <p>fighting 215:15,21</p> <p>figuratively 251:17</p> <p>figure 238:6</p> <p>file 113:4 130:15 131:20 132:4,5 141:24 170:7 221:9 221:24 222:10 223:4 259:6</p> <p>filed 13:13 14:3 48:5,8 48:9 66:12 69:17 70:23 91:5,22 116:7 131:14,17 154:16 177:14 216:20 249:23</p> <p>files 126:10 132:2 151:22</p> <p>filing 12:7 68:21 69:12 127:22 168:10,24 198:23 199:1</p> <p>fill 44:21 84:20</p> <p>fills 63:1</p>	<p>final 59:24 69:19 71:13 92:9,11 95:11,17 97:7 126:7 153:21 208:13 221:24</p> <p>finally 59:22 220:3</p> <p>financed 21:13,17</p> <p>financial 26:18 27:4 34:22 190:12 232:4 233:23 243:10,14,17 249:20 253:16,19</p> <p>financing 209:25 212:17 216:11 242:5 254:12</p> <p>find 5:23 9:2 50:2 109:19 121:7 122:4 150:6 156:21 161:23 207:25 210:5 217:19 217:21 244:20 245:8 258:19 261:1</p> <p>finding 46:25 118:17 136:4 185:10 196:14 258:12</p> <p>findings 114:17 115:20 117:19 118:3</p> <p>finds 235:13</p> <p>fine 4:16 7:10 8:3 9:23 11:17,21 53:11 90:18 95:21 112:11 126:16 131:5 136:20 156:23 168:5 170:18 173:20 176:22,24 185:1 259:12</p> <p>fined 155:16,17</p> <p>fines 155:19</p> <p>finished 54:2 59:23 161:3 176:23 223:6</p> <p>finishes 164:7</p> <p>fire 69:16,19 92:1,2,13</p> <p>fires 71:15 79:17,19</p> <p>firm 18:16 251:11</p> <p>firms 109:16</p> <p>first 8:14 28:6 50:1 56:8 68:5 72:7 73:1 73:19 76:12 85:23 90:1 94:19 110:9,12 127:14 142:6,12 157:6,6,10,11,13,17 158:1,1 160:25 165:20 169:17,18,18 179:3 192:5 195:20 195:20 196:2,22 211:13 214:13 224:17 225:12 229:4,24 230:22 241:6 253:15 254:18</p> <p>fit 114:12 115:8 236:12</p> <p>five 56:4 60:13 81:12 120:21 135:20 157:15 157:16 162:4</p> <p>five-minute 178:22</p> <p>five-year 68:4</p> <p>fix 71:21 216:20 218:21</p>	<p>242:12,16</p> <p>fixed 79:12,22 256:9 260:18</p> <p>fixing 251:17</p> <p>flare 83:24 84:7,8,10 95:11,14,16,23 96:6 96:14,19 245:13</p> <p>flared 79:18</p> <p>flaw 168:12</p> <p>flip 75:10 76:1,21 88:2 90:3 194:19</p> <p>floor 32:20</p> <p>Florida 219:20</p> <p>flow 15:7,10 89:22 101:17,21 102:1 104:23 195:11 196:17 202:22 205:1 210:18 210:22 213:12 233:5</p> <p>flowed 40:24 41:6</p> <p>flows 16:17,18 189:2 195:8,9 202:7 208:2</p> <p>follow 119:14 243:12</p> <p>following 92:24 94:15 120:17 175:9</p> <p>follows 115:3</p> <p>force 7:8 186:17</p> <p>foreclose 156:14</p> <p>FOREGOING 261:16</p> <p>forget 244:1</p> <p>form 115:4 141:14</p> <p>forma 102:4,5 105:5 208:9</p> <p>formas 85:4 195:7 204:14 207:17,21 237:19,21,22 238:6 238:15 245:17</p> <p>formed 94:23 99:9,16 99:18 180:9,11,25 181:1 255:7</p> <p>former 3:23 18:4 43:6</p> <p>forms 133:7,17</p> <p>Fortelka 59:2 208:23 251:19 252:4</p> <p>Fortelka's 238:8</p> <p>forth 115:5 118:3 171:8 184:2</p> <p>forthcoming 108:7,9</p> <p>forward 108:21,25 112:6 113:11 121:11 190:21 191:4 195:7 218:13 219:1 232:16 241:20 251:24</p> <p>Foth 55:3 56:12,15,16 57:23 91:7</p> <p>Foth's 56:19</p> <p>fought 91:24 187:16</p> <p>found 45:15 47:1 48:6 191:3 197:20,22 246:1,4,9,14 247:17 257:11</p> <p>foundation 44:4 68:11 109:1,9 113:25</p>
---	---	--	---	---

<p>four 56:6 73:19 74:20 93:16 171:6 235:19 255:25 260:1 fourth 81:6 frankly 188:23 214:23 242:1 free 94:5 184:24 196:16 213:12 freely 7:12 183:21 197:25 233:8 Friday 112:16 front 49:21 64:8 72:21 130:23 131:2,17 169:15 172:15 194:14 218:16 250:25 256:4 fulfill 55:23 full 91:7 95:4 171:1 fund 15:6 16:15 18:21 18:24 22:5,7 23:24 25:16 42:21 43:1,2 187:17 202:2,6,6 204:10 212:25 234:18 235:6 244:3,4 253:5 258:4 fundamental 25:16 229:22 237:24 238:4 238:18 funded 235:1 funding 38:4,10,11,20 38:23 39:2,21 200:23 211:20 214:4 230:7 238:7,13 244:12 247:2 248:8,14 253:2 255:22 funds 19:10,11,13,15 20:5 22:21 189:20 195:2,12 197:2,8 201:8 204:17 205:1 214:7 219:5 220:25 233:5 242:12,20 254:4,7 256:22 258:14,19 260:11 261:5 further 29:18,25 43:1,2 48:18 53:12 90:21 110:16 155:22 165:7 166:17 178:15 198:11 203:15 232:11 239:24 247:17 253:13 future 6:14 160:18 161:25 179:21 186:7 196:17 200:7,9 219:23 220:3,18,21 223:25 230:2 241:15 246:1,8,15 247:19 253:15,19 254:5 257:10 258:12</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>G 221:13 Galesburg 61:20 game 43:21 243:10,12</p>	<p>gas 20:19 21:14 22:18 23:1,14 40:15 41:3,8 43:15 44:2,14,16,22 45:10,16,22 57:2 58:21 60:6,10 62:24 67:16 69:1,14,24 71:13,21 73:20 74:5 74:17 75:1,4,8 78:19 79:18,20 81:9 83:16 83:18 84:19 87:1,10 87:12,13 88:12 89:4,6 89:9,10,14,16,22,24 89:25 92:12 94:21 96:2,16,22,23 98:23 101:10,17,21,23,25 102:9,20 103:4,10,13 104:6,11,15,23 105:3 105:12,16,21,22 106:18 109:19,20 110:5,10,10 155:7 202:10 206:2,13,14 206:19,20,23 207:6 208:2 211:3,20,25 229:2 233:16 235:3 243:1 245:10,12,14 249:9 260:13 gasses 70:5 gas-to-electric 60:11 gas-to-electricity 209:13 gas-to-energy 20:24 21:18 247:4 gather 98:22 gathering 108:3 GCCS 74:5 general 37:15 208:3 212:6 242:7 generally 35:18 78:17 128:12,15 129:16 130:17 134:3 135:19 138:4 144:23 154:19 general's 130:16 generate 89:15 210:17 211:21 233:3 generated 70:5 74:6 85:6 90:1 102:23,24 105:8 212:12 generating 191:15 210:23 generation 19:1 124:5 generous 214:6 George 1:10 224:20 getting 3:9 153:1 188:5 188:21 198:20 222:21 243:3,8 249:18 251:21 GGCS 87:7 94:21 98:20 108:4 112:23 give 6:13 31:17 32:11 34:10 114:6 127:17 145:5 181:14 197:2 216:22 219:10,16</p>	<p>221:8,12 given 17:11 61:11 113:8 139:5 143:13 149:18 151:17 163:23 168:23 190:6 198:12 200:19 203:5 209:16 211:11 212:4 219:1 219:25 220:23 222:2 242:7 250:18 258:8 258:17 259:16 gives 8:25 182:1 184:19 giving 17:3 116:16 205:21 221:14 242:8 glare 119:10 gloss 185:20 go 10:12 49:15 53:3 54:18 55:4 64:24,25 67:14 68:5 71:23 73:18 90:25 93:16 94:11 105:13,18 133:4 134:2 141:23 142:6 143:13 146:2,4 149:25 152:16,19 155:19 157:6,11 167:4 168:20 172:25 178:2,8 179:3 187:8,9 195:6 201:20,23 203:21 216:6 218:20 223:14 225:12 229:5 234:21 237:1,2,4 238:23 241:6 242:15 250:23 252:12 253:13 256:5 259:20,22 God 49:17 God's 251:24 goes 113:14 119:25 126:6 135:3 136:5 143:4 171:4,24 182:18 205:5 217:22 223:15 237:11 239:23 256:6 going 4:24 8:15,20 14:13 15:19 25:16 26:13 49:9 50:18 51:24,24 62:7 63:11 82:9 105:18,21 111:16 112:2,9 113:11,15 114:4 116:2 120:1 141:13 148:24 149:24 152:15 153:17 156:12 160:8 160:9 161:23 163:24 170:22,23 173:9 185:9,12,13 186:7 187:15,17 188:25 195:22 196:7 200:11 201:14 202:14 203:25 204:21 206:21 207:4 208:3 211:11 212:4 214:25 215:2 216:19 216:19 218:13 219:2 219:7 230:9,24</p>	<p>232:12 235:12,15 236:17 237:1,1,4,5,8 237:10,18,19 238:22 238:23 239:2,2 243:5 243:6 244:19 251:3,7 251:9 252:3 253:5,6 253:25 254:10,12 256:16 gold 13:8 207:22 good 43:18 147:8 167:7 237:15 239:1 246:17 goods 30:6 240:19 gotten 154:12 201:6 210:20 government 65:6 117:19 gradually 69:13 grant 135:18 164:20 granted 115:22 125:17 153:3 159:3 160:1 241:5 granting 160:2 173:21 173:22 grass 69:19 71:15 92:1 92:2 great 190:7 214:24 259:22 greater 91:15 104:15 205:9 green 148:8 177:23 178:7 251:11 Greenblatt 2:6 10:3,7 10:11,13,18,19 11:23 23:11,23 26:1 31:3,9 34:8 47:25 48:24 49:21 50:22,25 51:5 53:14 183:12 186:22 188:10 189:4 192:7 202:19 203:2 209:10 212:15 213:9 214:6 215:5,13,18,21 216:4 229:9,15 230:6 231:1 232:8 233:25 234:7,8 234:20 237:16 238:12 241:23 244:3 248:10 248:11 253:4,6,8,9 254:15 256:4 258:3 Greenblatt's 203:5 213:4 214:10 215:24 229:18 232:18 235:14 Greenblatt-controlled 231:23 greenhouse 23:1 Greg 18:3 Gregory 1:12 grid 86:22 gross 205:2 227:15,17 ground 61:9,12 64:23 grounds 18:10 64:16 82:25 group 137:17 guarantee 163:12</p>	<p>189:19 197:7 200:6 200:12,16 253:23 guaranteeing 196:3 guess 5:9 47:16 53:18 69:14 80:4 84:15 120:5 153:23 160:7 184:8 186:14 guilty 45:15 guy 234:2 G-r-e-e-n-b-l-a-t-t 10:18</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>H 221:13 half 73:1,22 83:20 99:25 hall 117:8 hand 35:24 36:4 46:23 187:15 194:21,22 231:5,6 handle 18:17 handling 98:12,15 227:18 hands 253:1 handwritten 147:20 happen 42:22 144:10 149:5 165:17,19 186:7 219:3 223:3 happened 19:11 171:23 213:7 happens 3:18 171:4 196:23 233:9 hard 131:1,1 142:2 146:18 234:13 Harry 59:4,10 76:5,8 76:15 100:23 150:13 151:10,14,18,23 152:5 244:21 hazardous 247:10 hazards 246:25 head 95:13 155:21 header 97:2,11 98:5,6 98:10,17 101:6 health 233:23 245:20 246:25 249:11 hear 11:18 26:2 41:18 54:12 111:25 118:6 178:23 189:1 heard 10:19 13:8,14 14:5 20:7 79:24 118:19 122:17 213:4 228:6 234:22 240:12 249:1 256:19 257:14 hearing 118:13 119:2 134:10,11,12,14,15 172:22,22 173:3,4 215:1 249:18 hearings 134:20 hearsay 64:16,22 65:9 90:15,17 heightened 172:18 held 118:13 132:11</p>
---	--	--	--	---

<p>134:15 190:10 helped 56:24 helpful 179:10 Henderson 59:5,10 76:6,8,15 100:24 150:13 151:10,15,18 151:23 152:5 168:8 168:11,14 170:5,13 221:8,15 222:10 244:21 he'll 179:3 high 96:25 98:24 155:19 206:10 higher 91:17 104:23 212:23 highest 89:25 highlight 116:5 216:2 highlighted 256:4 highly 114:22 232:8 high-end 97:6 hired 89:15 historical 109:20 246:7 history 16:21 80:14 127:3 158:12 159:21 160:21 162:24 164:15 164:19 172:19 209:9 227:13 230:16 239:8 253:21 256:21 260:23 hold 90:11 129:6 134:12 173:4 181:13 183:1 198:20 holder 129:5,7 175:4 184:7 holders 197:25 holding 183:8 Holdings 13:20 hollow 248:7,13 Home 34:22 honor 3:4 7:10 8:5 9:11 9:16 10:5 11:18 16:11 18:11,13 25:10 26:10,16 32:9,13 35:9 47:3 48:16,19,21 49:7 49:8,14 53:12,22 54:7 54:9 62:11 63:6 64:1 64:13 65:2,3 71:24 72:19 73:8,23 75:11 76:2,22 77:5,8 79:2 81:18 82:2,24 85:15 88:1,18 90:18 93:13 100:6 104:3 109:25 110:16 112:7,8 113:13,25 114:7,15 115:1,13 117:7 119:15,16,17,24 120:5 122:16 126:11 126:16 127:6,24 129:18 136:3 139:21 141:1,21 145:6 146:20 147:24 149:23 152:18 153:1,10 156:1,4 158:14,19,25</p>	<p>159:6,19,25 160:16 160:25 162:1 163:23 165:4,6 167:3 174:8 174:12 176:13,19 178:25 179:25 180:4 181:24 183:7 185:6 186:10 189:16 192:4 192:16 193:20 195:10 197:13 198:25 200:4 204:16 207:25 208:19 209:19 210:3 211:4 213:2,8 215:14 217:20 219:11 224:15 224:19 225:13,25 226:5,9,10,25 227:25 228:6,11,20 229:7 232:11 235:8 236:4 236:16 237:16,23 238:25 240:12,22 241:9 243:15 248:17 250:19 254:19 255:20 255:23 259:5,7 HONORABLE 1:7 Honor's 122:17 160:12 203:19 222:11 hook 25:5 hope 193:17 196:16 248:12 hopes 248:8,14 host 228:5 hot 234:1 hour 73:2,2 86:1,2 hours 55:25 86:13,21 huge 211:12 213:9 215:22 218:24 hundred 35:24 59:19 79:6 188:8 250:1,2 hundreds 46:13 233:18 hypotheticals 176:5 H&M 211:20</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>Id 247:15,22 248:9 idea 5:17 23:8 29:9 36:22 37:3,5,10 38:3 39:24 40:3,12,13 42:3 42:5 188:12 211:10 213:19 214:3 220:24 234:1 241:20 243:9 245:15 251:22 252:19 identification 250:10 identified 81:20,23,24 132:9 133:18,20 135:8 136:1 137:5,19 152:7,14 155:20 156:12,18 158:22 159:1,8,9,12 identifies 126:2 236:7 identify 83:17 111:1 119:21 126:2 134:6 159:7,10 IEPA 46:18 60:19</p>	<p>64:22 66:2,13 70:13 70:23 76:6,19 77:14 77:20,23 78:25 79:14 84:6 109:8 120:17,23 121:2,6 122:8,10,13 123:19 125:16,24 127:3 128:15,17 131:11,14,18,22 135:25 140:3 143:2 144:19 148:10,15 150:25 151:8,17,22 155:6 158:11 159:21 160:14,22 164:15,20 169:5 171:5,8,16 210:10 221:21,21 228:24 IEPA's 136:14 ignore 215:11,12 218:22 ignored 207:10 IIT 1:12 8:16 20:18 23:25 39:10 42:7 49:3 65:1 80:3,8,10 80:18 85:1,5 87:12 94:13,20 96:7,8 99:10 99:19,21 101:4,5 102:15 107:7,10 122:18 146:7 149:25 151:15 155:5 160:17 160:21 161:13,21 162:10,13,21 163:2,6 163:25 165:9,11,11 165:17,19 169:10 179:13,18 189:13 191:24 196:4,11,12 200:24 208:16,16 225:7 231:6 234:4 235:17,18 236:1 237:1,5,7,10 238:2,6 238:14,23 240:19 242:4,8,9 244:19 246:25 247:1 256:6 IIT's 189:14 236:11 237:9 245:1 IL 1:20 ILCS 174:11 181:25 182:1 216:25 217:1,5 217:6 221:22 Illinois 1:1,4 5:6,11,12 5:15,16,18 6:13 7:1 7:16 10:20 11:4,14 15:22 40:16,25 41:1,7 41:15,24 42:18 45:23 46:15 49:22 51:6,13 52:6,18,21 55:10,21 55:24 56:23 65:20 71:7 72:22 75:14 76:6 86:6 120:12 123:13,20 124:4,5,17 130:10 133:3 157:18 168:15,17,22 169:22 174:10 180:15,23</p>	<p>181:11,24 183:16 192:11 198:17 202:19 204:9 216:13,25 218:14 224:3 230:12 236:9 247:7 illusion 240:2,21 241:1 illusory 231:13 imagine 25:12 191:3 216:9 immaterial 214:14 impact 128:13 153:25 impacted 246:8 impeach 32:14,14 impeaching 237:21 impediment 41:23 173:15 203:11,13 implementation 106:6 implemented 124:16 124:22 implication 110:6 implicit 157:25 232:2 258:10 important 5:23 6:12 210:3 236:24,25 importantly 108:1 185:24 impose 256:25 imposed 115:6 179:19 196:8 249:6 impossible 6:17 7:7 impression 47:10 impressions 47:16 improper 94:3 improperly 122:3,3 improve 196:17 improvements 56:25 57:2,7 inability 98:6,9,21 191:2 inaccurate 206:4 incapable 42:19 incentive 194:23 195:1 195:9 204:10 215:22 216:20,21 218:20 inception 12:19 57:24 include 28:19 included 104:20 133:17 includes 95:12 236:7 including 28:15,17 66:5 202:8 221:15 232:4 239:13 246:5 249:1 income 26:24 85:5 193:9 233:3 243:16 254:3 257:22 incompetence 227:15 227:17 incompetent 250:13 inconsistencies 234:22 incorrect 104:16,25 192:2 incorrectly 79:21</p>	<p>increase 86:3 102:19 103:4 increased 212:3 increases 105:23 211:19 increasing 103:3 incurred 3:16 19:4 incurring 3:13 independent 22:22 36:13 192:22 India 211:8,11 212:5 indicate 74:9 76:7 86:19 115:23 116:18 117:22 118:2 120:22 158:1 189:1 195:8 221:14 240:18 245:13 255:24 indicated 117:25 146:21 153:3 168:8 172:17 179:1 183:14 185:2 206:15 222:8 222:12 indicates 87:15 90:12 90:12 121:22 173:24 194:16 195:11 207:20 217:25 219:20 220:10 221:16,20,23 indicating 119:19 145:8 170:4,5 195:6 199:1 222:4 indication 119:7 147:10 203:14 204:8 222:12 251:4 260:6 indicia 243:13 indictment 114:24 indifferent 250:13 indirectly 40:9,11 90:11 indirectness 259:18 individual 208:14 individually 150:13 individuals 179:17 190:13 209:1,12 221:2 230:6 232:14 239:1 Industries 59:22 information 108:4,7 115:23 116:17 119:18 120:11 143:14 171:10 171:13,23 190:19 204:23 232:15 241:22 infrastructure 55:3 91:7 infuriating 49:11 initial 126:22 132:23 152:7 154:21 157:14 213:5 initially 158:3 initials 140:8 initiated 47:24 inoperable 71:14 input 126:6</p>
---	---	---	--	---

inside 60:12 insiders 243:24,24 insofar 43:15 inspect 78:19 install 74:17 installation 20:23 21:14,18 installations 84:17 installed 45:6 57:8 instance 164:22 173:6 196:18 instances 171:22 institute 253:8 instrument 231:10 insufficient 168:16 241:10,11 insurance 220:19 intend 254:15 intended 161:7 187:6 187:12 220:22 233:13 247:14 intent 78:1 138:21 171:14 221:22,25 intentions 7:13 interactions 228:24 interest 23:16 34:23 61:7 91:24 128:21 173:5 184:7 203:17 205:3,11 212:24 244:14 interested 4:14,16 5:2 18:15 134:5,21 173:2 interests 198:1 233:17 interfered 45:13 intergovernmental 57:21 interior 120:19 interjecting 49:7 internal 181:22 Internet 181:17 interposed 229:11 230:13 interpretations 124:23 interrogatory 82:8 interrupt 62:12 intervening 106:15 152:2 introduce 73:24 114:4 149:20 introduced 117:12 introduction 114:1,5 investigate 190:17 investigated 23:9 investigation 115:21 116:9 118:12 120:12 investigations 45:1 investment 5:6 6:13 7:1 7:16 10:20 11:4,14 15:22 16:14 40:16,25 41:1,7,15,24 42:19 49:22 51:7,13 52:6,18 52:21 183:16 192:12	195:1,2 198:17 202:20 204:9 230:12 investments 212:24 219:6 involuntary 5:25 6:4,8 6:10,19 7:20 181:4 185:17,23 186:3 249:22 260:5 involved 56:8 62:5 80:8 125:9 132:24 174:3 206:4 208:14 215:15 218:4 242:8 244:14 248:11 249:25 involvement 21:3 125:13 iota 233:21 irrevocably 231:20 Island 36:7,8,13 37:6 37:11,13 48:24 182:15 issuance 132:24 140:17 217:15 issue 3:20 4:15,16,18 5:2,19 8:22 9:14 10:6 41:9 53:20 70:25 79:11 109:12 112:22 113:10 125:19,20 127:4 129:25 133:10 135:9 139:11 149:3 157:14 160:23 161:1 165:21 166:11 180:3 198:10 203:24 221:20 221:21 issued 46:3,18 58:22 65:22 66:19 67:5,7 70:3,13 71:1,12 72:11 73:13 75:1,5 76:6,8 76:14 88:10 92:5 103:14 135:5,14 137:5 144:12,12 149:1 151:9,13 159:18 166:19 issues 50:8,9,16 61:7 62:23 63:4 69:1,13 70:1 80:22 116:21,22 124:20 127:14 152:22 171:4 179:11 215:6 217:8 218:16 242:5 244:23 issuing 138:22 ITC 230:22 item 67:13 74:6,11,16 74:18,20 170:17 172:21 items 70:1 74:22 84:23 114:16 116:10 150:24 153:6 194:3 211:5 216:16 222:5 223:11 252:17 i.e 220:5	jag 215:7 jagged 89:19 Jahelka 12:24 25:1 27:14 42:10,13 52:4 52:12 186:22 188:7 194:13,18 202:18 203:3,16 209:10 212:15 216:4 229:8 229:13,19 231:1 232:8 233:7,8,25 234:2 237:15 240:16 251:25 252:21,21 254:14 258:2 January 31:11 34:9,16 35:23 36:2 75:16 79:23 86:18 88:11 90:8,10 192:18 Jasmine 169:18,20,21 Jay 19:19 job 43:18 58:3 124:13 133:24 215:9 250:15 252:9 jobs 70:18 216:7 jogs 236:19 John 2:10 7:17 17:5,8 21:4 22:14 50:10 59:2 72:23 74:16 81:15 84:12 102:3 150:22 175:10 177:1 177:5 237:25 242:20 Johnson 252:6,10,13 252:16 joint 58:7 Jordan 1:12 3:4 4:6,9 4:13,23 5:1,8,17 6:6 6:21 7:10 8:3,10,19 9:5,11,13 10:2,3,5,15 11:22 16:7,10,12 18:13,18 23:19 25:20 25:25 26:3,6,10 31:4 32:9,13 35:8 44:4 48:11,23 49:6,13,16 49:20 50:24 51:4,16 51:17,21 53:4,11,17 53:18 54:4,7 64:19 111:1,6,22 112:2,5,12 112:14 114:15,20 115:14,25 116:5,20 117:4,7 118:6,7,10 119:20 121:8 126:11 127:6,24 129:18 136:3 146:19 147:1 152:25 153:9 156:3 156:19 157:19,23 158:14,18,23 159:1 159:14,24 160:25 161:2,15 162:1,15,23 163:11,16,18 167:4,6 168:4,5,6 169:11,13 174:7,11,14 175:24 176:25 177:1,7 178:15 179:2,9,24	180:8,18 181:16 183:6 184:11,21,25 185:6 186:6,21 187:22 190:15 191:22 192:2,4,16 193:8,11 193:13,18 194:6,12 195:17 196:18 197:12 198:2,14,20 200:3,14 201:12,19,23 202:4 202:13 203:1,22 204:2,5 205:16,19,23 206:6 207:24 208:12 208:18 209:18,24 210:2,15 211:1 213:2 214:13 216:2,24 217:2,4,7,12,14,19,24 218:10 219:10,13,18 220:8 223:19,22 224:14 225:2 228:14 232:2 241:21 244:1 248:16,17 249:16 252:13 254:18 255:17 257:3 259:4,12,17,21 259:25 261:12 Jordan's 122:17 228:8 Journal 117:14 Judge 9:12,24 38:13 224:18 231:7 248:3,4 judgment 255:6 July 68:8 135:23 143:20 jumper 44:13 jury 47:6	79:22 80:1,3 88:23 89:7 93:5 96:15,16 103:17 105:18,20 108:5,5 109:14,23 113:9 118:20 121:8 126:12 129:8,20 140:16 141:15 143:15 147:3,13,21 148:12 150:1,16 152:25 155:21 156:3 157:22 161:5 162:2,12 169:19,20 173:9,18 174:24 175:1 177:13 181:20 185:6,12 187:13,22 188:15 189:7 191:7,8 195:4,7 197:15,17 198:15 201:16,20,24 203:4,6 208:8,18 213:15 214:14,16,19 215:5,6 216:5 225:22 226:13 228:2 229:16 230:24 231:22 234:14,21 235:2,3,14 238:9,16 238:18 239:4,11,17 240:4 241:1,12 242:25 243:2 249:20 249:25 250:19,21,22 250:23,25 251:6,8,22 252:21,22 254:21 255:11,19 259:4,19 260:21 knowing 219:6 knowingly 48:10 knowledge 17:14 22:20 30:5,9 38:10,19 39:4 41:13 43:24 50:15 62:18 66:11 68:9,17 70:22 71:16 72:15 73:5 91:23 92:18,20 109:6 119:3 144:20 148:6,7 174:17 175:3 known 98:1 180:16 knows 212:20 234:8 235:7,7 237:6,9,12 241:5 Knox 61:20 Kujaca 1:15 9:22 11:18 48:20 54:9,14,19,23 62:12 63:6,14,22 64:1 64:4,7,17 65:3,9,12 65:15,16 68:16 71:23 72:2,3,18,20 73:7,9 74:24 75:9,12 76:1,3 76:21,23 77:7,10,12 79:13 81:4 82:1,5,14 83:6,13,22 85:2,3,21 88:1,4,5,17,19 90:3,5 90:18,21 94:1,7 106:2 106:4,24 107:3,12,17 107:21 108:19,20 109:5,17 110:15,23
	J		K	
			K 221:13 Kahela 120:15 Kansas 117:16,17 keep 46:4 126:9 131:19 132:2 161:2 239:5 249:16,18 keeping 62:1 133:19 Kentucky 55:12 Kepner 169:19 kept 132:5 kidding 211:13 kilowatt 86:2,13,21 kilowatts 86:1 105:10 105:11 kind 166:25 182:9 183:3 186:18 187:24 194:20 199:16 225:23 227:23 253:24 kinds 261:10 knew 214:24,25 215:1 know 5:8,21 6:6 7:15 8:8,12 13:20 14:1 17:5 18:3 19:15,19 25:13 38:12 40:1 42:2,4,16,23 48:10 50:1 59:7 68:2 71:3 75:23 77:22 78:5	

110:24 111:3,7,10,18 112:10 115:12 122:23 123:1,6 126:16,18 127:10 128:5,8,14 130:4,5,19 136:8,9,14 136:18,21 139:20,22 140:25 141:2,15,20 141:25 142:3,12,16 142:20 144:25 145:5 145:13,17,23 146:16 147:2,9,23 148:2,4 149:18,22 150:3,8,9 152:15,21 153:5,17 153:21 154:4,7,8,13 154:14,25 155:22 163:23 164:8 165:5,8 166:15 167:3 176:3 176:10,18,23 241:17 243:6 244:9,11 245:8 245:19,23,25 251:14	language 227:10 large 19:8 117:18 249:2 250:8 late 143:8 laterals 87:4 law 5:6,10,12,16,18 6:1 18:16 47:1 114:10 115:6,10,22 117:13 117:14,16,17 118:15 180:16,17,19,21,23 180:24 181:5,8,11 197:20 198:7 260:4,4 laws 5:10 227:14 lawsuit 12:25 13:2 47:24 189:23 253:8 lawyer 5:9 layout 106:12 leadership 17:18 18:7 19:23 leading 111:20 leap 213:9 lease 28:15 32:4,15 58:21 66:3 77:23 78:1 80:11 81:2 100:8 108:6 242:2 246:21 leased 30:16 leases 14:15 28:20 34:3 34:13 65:1 183:21 202:7 left 91:10 238:24 legal 19:16 41:14,23 80:4 144:14 146:4 149:13 166:24 167:18 168:20 201:16 257:16 legally 196:7 254:16 legislators 109:15 legs 69:9 87:5 98:23 lend 14:18 50:17 211:23,24 lender 11:25 12:2,5,9 15:3 16:22 17:17 18:6 19:22 21:1 35:9 43:8,12,13,24 189:10 191:3 213:21 238:24 lenders 214:11 237:4 237:12 256:3,6 257:20 lender's 16:24 17:8,24 length 160:13 182:4 leniency 109:13 lent 189:8 Leon 2:6 10:3,13,18 213:9 248:10,10 lessen 256:11 lessor 11:25 12:11,14 12:15,17 33:19,20 letter 72:21 75:14 120:10 133:11 140:1 140:13 170:4,18 171:4,13,15 letterhead 59:14	let's 63:11,13 152:19 194:2 198:19 199:7 215:25 235:1,1 238:6 253:12 level 118:14 120:21,23 172:17 237:24 levels 74:9 liabilities 3:15 liability 29:15 180:22 license 55:20 licenses 221:17 lien 189:18 lieu 108:13 121:17 199:12 life 215:22,24 lights 10:8 likelihood 163:11,15,21 179:11,14,17 203:23 205:8 211:20 224:4 Likewise 13:18 limbo 219:2 limine 160:2,3,4 164:4 limitations 201:7 limited 23:25 117:22 215:10 limits 247:18 limp 209:5 218:25 limp-along 215:12 Linda 1:15 line 21:24 31:18 81:6 83:1 85:23 89:10,19 93:21,24 96:8 106:20 163:24 178:8 192:22 205:5 207:7 208:10 224:4 linear 110:12,13 lines 11:15 liquid 28:23 233:8 liquidate 20:1 list 159:8 listed 74:10 82:6 87:6 156:6 170:2 listing 243:20 litany 234:21 Litchfield 20:8 40:15 204:22 207:18,21 223:11 224:5 literally 251:16 litigation 215:16 244:15 248:11 little 47:5 69:14 139:4 180:2 199:7 215:7 live 121:17 LLC 13:9,15 55:3 Loaf 188:11 loan 7:4,7 14:24 15:4 16:16 22:4 23:25 24:1,6,14 25:6,23,25 27:22 28:3,4,6 34:1,2 42:6 51:13 52:6 179:12 186:10,13,24 187:23 189:16 191:18	192:1 196:5 197:5,7,8 198:24 199:3 201:5,8 201:10 204:13 213:22 231:4 234:18 235:6 235:15,18 236:8,13 238:2 242:9 243:23 253:6 255:24,25 256:14 257:13,17,20 258:4,18 260:11 loaned 33:19 194:8 260:12 loans 14:15 22:22 34:3 34:13 202:7 253:2 260:9 local 227:14 location 33:4 230:4,18 lockbox 236:21 237:2 locked 78:20 logging 143:5 long 12:17,20 57:25 79:11 86:5 113:14 123:19 154:17 217:23 228:24 232:12 242:9 244:5 248:1,25 longer 122:18,19 145:25 look 49:3,25 99:5 100:5 104:9,18 116:2 139:19 143:17 169:8 178:5,6,12 181:7 193:1 194:14 198:8 226:13 240:11 257:6 257:7 looked 104:12 169:15 198:5,6 216:14 254:20 looking 50:20 67:10 71:5 72:8 99:8 120:8 135:19 141:11 169:17 194:20 200:5,5 201:25 219:13 222:17 227:11 looks 132:15 135:13 150:8 152:17 184:15 226:18 227:16 253:21 253:22,22 loop 84:14,17 106:25 107:13,19,22 231:22 loosely 215:20 lost 187:24,25 lot 113:15 138:22 245:13 252:23 low 84:4 87:3 105:5 206:5 207:10 241:13 lower 241:13 lunch 63:11,15 72:8 177:12	mail 143:1 144:5 146:6 146:10 147:4 148:5 148:12 167:12 170:1 177:11,21,24 mailed 143:3 145:9 177:10,11 222:6 mailroom 143:4 main 179:11 maintain 80:16 108:1,1 195:2 maintained 87:4 maintaining 20:24 70:20 180:11 maintenance 60:4 107:9 major 35:21 62:9 66:21 137:17 majority 11:7,9 183:13 228:15 making 21:25 23:17 115:11 124:23 133:17 173:24 185:10 188:24 210:22,22 212:14 214:7 218:1 242:21 244:6 Male 254:21 255:15 man 251:22 managed 17:1,3 management 17:9 20:15 58:15 60:2,25 71:21 80:12 99:1 182:23 208:23 247:1 manager 22:17 57:19 58:1 124:8,12 125:2 132:3 133:12,23 managers 43:5 managing 20:23 manner 181:10 209:14 218:11 March 192:10 218:25 marked 75:13 141:22 233:2 market 35:1 188:22 233:12 244:15,16 marketable 28:25 markets 212:5 marshal 6:19 master's 55:11 123:17 match 178:7,8 material 32:14,16 92:19 materials 92:18 matter 3:2 48:4 64:24 65:11,11 73:25 114:4 114:9,25 149:19 156:11 160:13 161:14 170:16 253:13 258:21 matters 50:13 82:4 92:23 115:5,6 117:23 119:5 Matthew 120:15 maximum 21:23
L labeled 72:4 76:4 146:7 lack 9:2 115:23 116:18 119:19 121:7,22 214:4 lacks 202:2 laid 49:21 195:24 land 44:13 56:24 62:10 62:22 63:1 67:22,25 92:5,10 125:14 173:14,17,19 182:15 landfill 20:12,19 43:17 43:20 44:3,7,9,12,18 44:19,22 45:2,5,10,16 45:17,22 46:4,10,12 46:19 56:9,18 57:18 57:22 58:1,4,11,12,14 58:19,20,22 59:12,17 59:18,19,23 60:4 61:13,19,20 62:23 66:8,22,23 67:16,25 68:1,21 69:19 70:6,8 70:14,17 73:22 74:5,6 76:18 78:7 79:20,20 80:11 87:1,10 88:12 88:15 89:5,22,24 92:23 94:21 98:7 101:10,17 104:6 105:23 106:15 108:12 108:22,25 112:25 120:4 122:20 127:11 127:15 129:16 130:6 137:19 155:8,17 175:7 177:10 223:5 227:8,9 239:16 242:15 249:9 260:13 landfills 20:7,20,25 56:2 67:22 125:10 239:10 241:22 242:6 242:13 landowners 44:15				
			M machine 197:18 206:13 machines 206:12 magnanimous 215:19	

mean 5:10 28:12 49:1 87:22 105:4 126:12 137:12 175:17 193:13 200:12 201:20 213:2 213:17 220:19 228:18 231:14 233:19 234:6 252:7 means 258:5 meant 157:12 161:8 measure 87:18 89:5 measured 89:7 122:3 measurement 121:24 122:1 measurements 122:4 measuring 89:4 meat 241:3 Medicaid 246:10 Medicare 246:10 meet 15:13,15 129:5 137:20 161:22 171:6 241:12 244:23 259:16 meeting 218:14 meetings 218:21 meets 200:2 member 158:11 members 125:6 memo 89:1 memoranda 88:14 memorandum 88:10 memorialized 24:21 52:13,16 memory 236:19 mentioned 61:3 70:12 71:14 72:12 78:8 89:3 92:1,16 101:9 227:3 mentions 75:7 merely 4:22 5:16 107:8 183:1 240:17 merged 56:12,15 merits 153:25 Messrs 212:15 254:14 met 59:10 220:11 232:7 258:20 meter 87:17 metering 74:18 86:19 89:4 90:7 101:21 102:1 methane 89:6 209:12 239:15 249:9 metric 211:17 Michael 2:8 123:1,4,9 microphone 11:20 mid 27:5 90:7,8 midday 177:12 middle 8:6,8 87:2 Midwest 124:5 migration 44:14,16 249:8 million 12:23 15:16 18:25 21:24 28:10,24 35:4 36:4 37:25 38:1	42:20 83:20,21 84:22 84:24 179:12 185:25 188:9,11 194:8 195:15,21,22 199:16 200:22 202:8 203:25 204:8 205:2,3,14 212:25 213:11,24 232:23 234:18 235:2 235:5,19 239:17,18 241:7 253:6 257:13 mind 38:17 51:11 239:5 mindful 193:21 mined 206:25 minimal 23:7 ministerial 160:15 161:5,10,14 minor 70:9 127:1 236:5 minute 48:15 87:16 232:13 miracle 209:5 misappropriating 48:1 miscellaneous 74:22 129:14 mischaracter 45:11 misstated 162:16 misstates 206:7 mistake 164:5 mistaken 26:1 38:17 53:2 142:1 227:2 misunderstanding 164:3 misunderstood 37:8 model 89:21 104:6,10 104:14,15,24 105:1 105:12,20,22 109:19 109:22,24 110:1,3,7 models 109:19 modification 127:1,2 129:2 130:11 152:1 165:23,24 166:25 modifications 126:20 126:25 modified 85:9 151:6 modify 129:11 152:3 moment 11:15 104:3 117:5 139:19 141:17 145:6 224:19 Monday 112:19 monetary 79:14 money 19:8 33:14,19 37:21 52:19,21 95:14 179:14 187:25 188:7 188:18 189:7,9,14 194:4 195:25 196:4 196:12,16 199:17 205:8 211:23 218:21 234:25 235:16 237:1 237:1 238:10 241:8 242:13 243:9 244:6 256:2 monies 18:21 188:13	191:7 195:5 196:20 198:23 200:10 201:13 202:14 205:7 211:21 215:10 238:11 256:5 monitoring 61:25 74:8 98:5 133:20 240:7 month 14:14,21 35:19 62:3 78:3 188:6,21 189:5 242:19,22 243:1,8 monthly 256:9 months 25:13 138:11 138:12,16 143:18 241:6 242:3,4 moot 3:20 morning 231:8 235:14 Moser 250:24 motion 54:10,10 153:3 159:3 160:2,3,4 164:3 224:24 225:4 242:1 258:22 259:7,10,10 Motors 219:14 mouths 187:11 movant 225:6 move 25:10 47:3 54:10 72:18 73:7 88:17 95:21,21 126:17 139:20 157:19 170:18 198:13 200:25 204:22 moving 47:6 195:14 218:13 moving 69:3 70:10 MTR 140:8 Muir 59:3 Muir's 207:12 multitude 228:1 municipal 63:1 mutually 231:9 mysterious 235:4 mystery 238:20	NEC 10:6 19:7 necessarily 79:11 255:7 necessary 15:20 83:23 94:20 107:5,11,19,22 107:23 133:25 158:6 160:14 163:10 214:7 234:14 247:3 253:18 258:15,19 261:5 need 54:2 78:18 79:9 87:5 96:14,18 112:21 113:22 149:19 156:8 158:20 159:17 162:2 162:5 168:3 174:5 180:2 238:10 241:7 253:14 254:4 needed 15:10 98:4 103:11 177:14 189:14 209:15 212:17 245:12 needs 84:13 101:4 102:25 224:25 253:3 253:13 256:23 negative 241:22 negotiated 24:23,25 27:22,23,25 42:6,9,11 109:12 236:20 254:8 negotiations 52:4,12,13 71:18 99:3 neither 197:17 229:9 246:21 247:13 net 14:17 190:13 never 3:20 5:20 18:22 20:6 23:9 25:14 38:17 45:12 47:1 59:10 72:15 77:6 82:1 105:23 119:11 213:4 230:14,15 254:2 new 11:14 21:3,6 22:5 22:17,20 37:4 44:23 50:17 53:20 62:2,25 74:13 97:2 101:6 111:14 113:5,5 126:21,22 127:5 129:5 161:17 204:15 220:15 235:13 259:11 newer 138:15 newly 255:6 newly-formed 255:1 Nichols 27:14 209:10 212:15 night 112:21 nine 123:21 138:10 143:18 nonbusiness 182:11 noncompliance 158:13 159:23 160:21 164:16 174:2,16,20,25 218:3 218:8 247:11 noncompliances 239:13 noncompliant 129:16 130:6,8,13,18	nondebtor 38:20 39:1,2 nonexistent 255:2 nonperformance 246:3 nonresponsive 47:4 non-methane 74:12 noon 63:11 normal 60:3 181:10 normally 61:10 Northern 1:1 247:6 note 50:21 51:8 52:17 53:1 65:4 118:15 166:3 179:13 183:17 183:19 207:16 216:14 221:6 255:23 noted 119:17 255:5 notes 97:4 161:11 217:19 notice 46:17,22,24 70:3 70:21 71:12 73:13,17 75:1,18 76:8 114:6 120:3,10 122:9 126:4 134:2,2,13,19 138:21 144:12,22 145:2,3,20 148:25 149:20 151:17 168:9 171:14 172:25 173:11 221:22,25 228:3 notices 46:2,14,21 64:21 100:9 116:3 120:2 125:19,20 130:15 159:17 210:4 210:4,11,16 228:1 notion 249:12 notwithstanding 39:8 NOV 76:14 92:2,5 November 94:14 NOVs 70:12 71:1 100:1 103:14,22 114:1 210:11 248:19 NSPS 62:2 number 3:10 10:20 11:4 49:24 58:11,14 58:20,22 59:17,18 61:13 67:16 68:1,1 69:19 74:11 87:20 88:3,13 102:9 103:7 117:18 137:17 148:3 178:6 179:11 192:14 197:24 206:9,16 207:2 235:25 249:1 numbers 4:7 147:16,20 147:20 155:20 178:8 204:13 205:18,21,22 205:25 249:2
N				
N 2:1 name 4:4 6:3 7:15 10:16,17 39:16 54:24 54:25 58:6 67:7 113:18 123:7,8,9,9 128:24 129:17,20 130:7 159:8,11 165:18,23 166:6,20 166:24 173:8 182:22 184:4,18 186:19 213:5 named 189:24 190:4,7 narrowly 226:19 National 182:5,17 185:21 nature 11:23 36:10 62:14 121:13 168:19 211:2 near 237:22 254:5 nearly 135:17				
O				
oath 32:22 34:10 177:4 234:3 object 8:6,18 32:13 38:14 53:23 62:12 81:19 85:15 135:4,6,9 152:25 156:4 182:11				

<p>232:1,17 objection 8:12 9:21,22 18:10 31:4 35:8 39:11 44:4 62:17 64:14,14,20 65:14 68:11 73:23 74:3 77:5,11 79:2 80:24 81:18 82:10,24,25 83:4 90:14,19 94:1,4 94:6 106:21 107:2 108:15 109:1,9,25 110:7 118:9 122:15 126:11 127:6,24 130:1 153:7 154:6 156:22,23 163:22 175:25 246:20 objections 64:23 246:23 obligated 29:2 43:15 242:11 257:4 obligation 7:6 23:24 29:8,10,14 41:14 50:23 51:12 52:18,20 197:3 201:17 231:11 235:17 256:22 257:1 257:5 258:5,7 obligations 15:13,15 28:19 45:21 51:12 52:5 60:1 92:9 179:19 189:15 194:10 196:13 200:24 208:16 231:10 249:7 256:16 observation 115:10,11 121:4,18 228:8 observations 114:11 120:15,19 121:1,6,13 122:4,8 observe 70:24 246:18 observed 115:5 obtain 134:10,10 138:6 161:22 162:11 163:3 163:9,20 191:7 226:24 241:22 242:4 242:5 256:22 257:17 obtaining 56:21 132:20 160:14 224:5 obviated 156:8 obvious 166:18 228:19 obviously 8:6,18 207:14 249:21 255:2 occasion 58:25 74:21 occupies 30:13,16 32:7 32:23 occur 210:6 occurred 210:18 October 142:19,25 143:24 144:2 146:22 177:11 213:6 offense 241:20 offer 18:23 64:19 160:19 215:20 237:20 237:20</p>	<p>offered 14:9 18:22,24 30:6 146:20 197:11 199:24 241:10 253:23 offering 189:12 199:10 offers 214:6 office 88:24 115:4 127:23 130:16 136:22 138:17 141:10 142:4 142:21 143:16,23,24 144:1,5 148:13 154:17 155:12 165:10 177:22 178:9 188:19 222:6 officer 7:17 10:25 11:12 21:6 27:18 40:4 97:13 106:7 175:6,10 183:12 227:13 255:9,13,18 officers 97:16 offices 66:13 70:23 131:14,18 136:15 170:1 official 58:6 118:13 121:25 135:24 136:1 136:11 137:4 150:21 151:4 152:1,9,13 246:13 officials 119:4 121:6 122:8 oh 14:21 25:25 37:8 72:1 90:8 128:8 148:2 177:24 178:3 oil 202:10 211:20 233:16 235:2 240:5,6 okay 4:25 8:23 10:12 11:11 12:4,11,14,17 13:4 14:1,4,11,14,17 14:21 15:8,21 16:2,10 16:18,21 17:5,13,17 17:21 18:3,19 19:19 19:25 20:3,7,17,22 21:13 22:4,10,15 23:11 28:14 33:13 41:20 47:15,23 50:4,7 50:15,20 52:11 53:11 54:4,8,20 57:16 59:16 60:18 61:21 63:14,18 64:5 65:12 67:9,20 68:7,20 71:5 77:10 88:1 94:11 96:12 97:20 102:3,11,15 103:2 104:22 105:15 107:17 108:19 110:17 123:1 125:9,16 126:9 131:1,24 132:6 135:21 136:13 139:16 139:19 143:12 145:17 146:6 148:9 149:18 149:22 154:4,7,13,24 167:2,15 168:1,14,21 169:8,12 170:1,4,10 170:16 171:3,16,21</p>	<p>172:1 174:13 175:4 175:20 176:22,24 177:17,23 179:6 187:19 189:11 193:12 195:14 197:19,22 202:3,12 205:13 207:23 208:11,13 212:13 213:25 215:25 217:10 218:9 219:9 228:16 232:10 236:15 244:11 245:24 248:21 252:22 old 101:12,14 182:4,17 182:20 185:21 243:20 older 138:14 omitted 220:2 once 66:2 72:11 112:3 133:9,21 134:1,13,15 134:18 135:2 144:10 144:13 ones 4:22 61:8 117:11 194:24 one-third 69:25 one-time 79:10 ongoing 18:24 29:10 180:10 181:2 onus 241:21 open 122:18 opening 160:16 224:23 operable 102:13,16 operate 22:12 75:8 81:3 84:6 105:3 107:25 111:21 139:1 154:18 155:7 166:20 175:5,7 184:4,10 187:3 189:10 229:23 247:9 253:3 operated 44:19 58:14 59:19 79:21 87:8 120:21 209:22 210:13 operates 180:11,12 181:1 213:10 operating 20:24 29:4,4 29:12,18,22 58:12 78:2 79:6 85:25 86:11,19,20 105:9,11 137:15,24 139:10 154:19 155:11,14,15 183:8,8 192:15 193:21 202:20 206:5 221:3 222:14,15 224:2 228:9,12 230:3 230:16 241:3 249:5 253:21 255:2,7 256:21 operation 20:19 21:7 21:14,18 23:13 39:22 42:22 59:20 69:1 90:12 103:18 105:6 180:25 181:1 202:10 210:19,24 226:18 241:6 247:4</p>	<p>operational 23:17 69:25 79:23 81:13 87:5 operations 18:21 19:5 19:16 20:5,15 38:5,11 38:20 39:5 89:20 103:15 123:22 126:2 191:16 193:6 205:6 212:19 216:3 238:14 246:24 operator 227:12 operators 43:4 214:11 opines 117:21 opinion 4:24 43:25 45:20 62:14 64:24 83:1 94:23 99:10,19 248:3 opinions 47:11 120:18 opportunity 81:5 179:4 186:1 189:22 250:18 258:7,25 260:19 opposed 46:19 114:17 116:21 180:10 184:23 202:21 218:16 226:16 226:17 opposite 158:23 202:4 203:16 235:20 optimistic 248:6,13 options 186:15 oral 257:23 oranges 161:18 order 32:14 58:2 110:9 119:6 134:12 138:6 160:2,8,12 168:23 169:4 170:6,8,12 174:6 178:24 179:20 192:17,19 198:16,22 221:5,7 222:9 225:14 247:18 254:19 257:21 orders 103:18 151:9,13 151:18 168:19 ordinarily 145:19 190:3 ordinary 149:5 184:15 184:23 194:1 organic 74:12 organizations 232:9 original 106:11 129:6 132:8 183:24 originally 65:22 85:10 132:6 146:20 Ottawa 224:3 ought 114:24 outlined 11:15 254:9 259:24 outright 234:22 outs 42:18 outset 195:22 240:17 outside 78:11 116:7 247:21,24 outstanding 35:15 130:15</p>	<p>outweighed 119:8 outweighs 116:13 overall 17:9 64:25 67:6 overestimated 207:15 overrule 82:9 118:8 156:25 overruled 18:12,14 32:17 35:10 44:5 62:17 68:12 74:3 79:4 80:25 109:2,10 110:7 130:1 153:8 163:22 overruling 64:23 65:13 oversight 63:4 over-girth 112:25 173:11 over-height 112:24 173:10,14 owed 33:19 owing 188:18 owned 40:2,10 209:9 owner 27:20 32:15 46:19 227:12 233:9 255:19 owners 3:23,23 14:4,11 43:17,20 44:3,8,9,12 44:18 45:17 46:4,10 46:13 120:4 ownership 34:23 36:12 36:13 91:24 128:23 173:7,8 owning 30:10 owns 27:13 35:6,6 38:2 234:9 oxygen 74:9 120:21,23 O&M 87:1 207:9 o'clock 251:17 O'Meara 1:14 8:5,14 8:23 9:4,21 53:22 112:17</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 217:22 page 31:18 50:1 67:8 68:5 73:18 88:17 90:4 94:18,18 99:14 141:20 142:6,11 147:24,25 149:25 150:1 152:16,24 169:17 170:11 236:6 pages 150:5 152:16,18 paid 3:9,14 18:16 29:7 39:8,12 52:7,7 86:22 91:7 242:24 244:4 palm 194:21 Panamericana 12:8 18:20 30:17 31:1 32:6,8,19 33:1,2 35:7 35:9,15 Panamericana's 32:20 Panamericano 32:16 32:24 210:1</p>
---	--	---	--	--

<p>paper 49:8</p> <p>paragraph 50:1,23 93:16,19 94:11,12 99:6,9,14,25 169:18 236:6,17</p> <p>parameters 7:24</p> <p>paraphrase 254:23,24</p> <p>pardon 31:22 34:18 36:20 181:6</p> <p>part 52:5 66:8 70:17 78:6 88:15 89:14 102:4 180:5 217:24 250:8</p> <p>partial 244:14</p> <p>Partially 95:25 97:15</p> <p>participate 224:23</p> <p>participation 23:25 182:25</p> <p>particular 117:12 164:22 168:4 241:20 249:15 259:18 260:13</p> <p>particularly 193:23 203:5 208:9 224:10 255:20</p> <p>parties 3:10 5:20 9:20 13:25 17:15 24:19 45:3 50:11 80:21 134:5 175:5,7 183:25 186:19 197:6 231:8 242:7 246:4,8 256:15</p> <p>partner 184:8</p> <p>Partners 30:24 36:7,8 36:13</p> <p>partnership 27:15</p> <p>parts 239:17,17</p> <p>party 14:24 118:18 134:21 156:4 173:2 222:11,15 242:8</p> <p>party's 191:9</p> <p>pass 23:19 199:8</p> <p>passed 148:22 190:18</p> <p>Pat 54:15</p> <p>Patrick 2:7 54:21 55:1</p> <p>pause 117:6 219:12</p> <p>pay 15:18 19:2,8 29:3 30:21 33:9,14,18 51:7 51:12 52:19,21,25 202:15 205:4,6 219:5 242:14</p> <p>payback 204:18</p> <p>payees 51:7</p> <p>paying 9:16 38:7 238:16</p> <p>payment 29:21 36:6 37:20 49:25 50:23 196:11 252:25 256:9 256:16 257:17 260:9</p> <p>payments 4:3 6:16 28:15 53:1 91:21 190:14 205:4 257:20</p> <p>payroll 3:14,15 222:13</p> <p>pays 237:25 238:3</p>	<p>pay-down 205:11</p> <p>Pekin 124:5</p> <p>penalties 103:21,24 109:7</p> <p>penalty 79:14</p> <p>pendency 139:3 166:4</p> <p>pending 3:25 31:7 100:25 111:15 242:2</p> <p>people 22:12,12 78:8 78:15 88:24 110:2 116:7 121:10,12 171:23 175:21 187:11 187:16 190:17 194:23 197:24 200:6 216:3,6 216:10,20 222:13 242:15 250:17,20,23 251:1,4,6,10,18,20 252:5,7 253:2 254:8</p> <p>Peoria 1:15 20:8,11 44:12 56:9,18 57:18 57:20,20 58:1,4,7,7 59:12,14,16,18,21,21 59:22,25 61:18 62:20 63:7 64:9 65:20 66:8 66:22,25 67:5 68:21 69:23 70:14,17 71:6 71:12,23 72:4,13,19 73:8,14 75:1,5,6,13 75:21 76:4,18,24 77:15,20,23 78:2,6,13 80:10,18 81:17,25 82:17 84:3,6,13 85:6 86:14 87:11 88:2,4,11 88:15 89:20,22 93:14 93:21 96:7 99:8 100:10,12,16,16 102:12 103:19,25 104:6,23 106:14 107:1,8,10,24 108:12 108:13,21,24 109:7 109:21 111:9,13,21 120:9 121:9 127:11 127:15 129:24 130:20 132:12 137:9,18 139:21,23 149:24,25 155:8,16 156:4,20 158:21,24 159:1,10 159:13 163:9 165:14 165:15 169:14 175:11 175:25 176:7 177:9 183:20 190:16 193:1 194:11 199:3 201:10 201:17 204:21 213:23 222:19 223:2 228:5 238:9 239:10 242:2 242:21,25 243:8</p> <p>Peoria's 60:20 67:7,21 107:10 246:20</p> <p>perceive 170:11 202:23</p> <p>percent 15:4,6 16:15 23:25 24:2,18 25:6,8 27:11,13 38:1,2 49:24</p>	<p>50:4 51:12,24,25 79:7 86:4 87:24 91:25 120:22 188:8 217:25 234:9 237:11,12,12 244:12 250:1,2 256:5 256:6</p> <p>perfect 233:12</p> <p>perfectly 45:9,12</p> <p>perform 22:22 43:15 65:1 162:13 187:4 196:25 229:24 231:20 239:22 240:7 250:17 258:19</p> <p>performance 6:14 13:6 13:7 14:10 43:11,11 45:15 62:3 74:13 89:7 90:13 92:22 93:8 160:18 161:25 163:7 179:22 199:19 200:8,9 219:24 220:4 220:4,18,21 228:3 230:21 236:14 237:9 239:8 241:15 246:2,9 246:15 253:15,23,25 255:2,7 257:10,15 258:13,15 260:13 261:6</p> <p>performed 17:10,11,25 18:2</p> <p>performing 42:19 45:9 45:13 86:15,17 239:3</p> <p>period 93:8 134:3,4,9 134:16,19 135:3 154:20 166:2 210:12 211:15 212:10 213:13 218:25</p> <p>periodically 69:8</p> <p>periods 124:1</p> <p>permit 44:13 56:22,24 57:11 58:16 60:24 62:2 63:5 65:19,21 66:4,15,16,21,23 67:1 67:6,9,18,22,25,25 68:2,10 74:23 75:2,5 75:6 77:4,14 84:6,8 111:4,8,12,19,20 113:2,4,5,6,10,17,18 113:20 116:14 118:22 122:20 123:24 124:11 125:2,17 126:5,19,23 127:4,13,23 128:2,21 128:22,24 129:5,6,23 129:23 131:3,4,7,9,13 131:16,19 132:5,7,11 132:18,20,23,23,25 133:11,22,25 134:2,6 134:7,22,25 135:2,5,5 135:6,6,9,18,20,21,22 135:25 136:5,11 137:5,10 138:7,8,9,10 138:17,24,25 139:1,3 139:9,10,11,12,13</p>	<p>140:17 141:10,24 143:7,9,9 144:13 145:25 147:14 148:17 148:22,22 150:10,17 150:18,21,25 151:5 151:17 152:2,3,6,8,14 152:22 153:2,6,12,13 153:17,19 154:9,18 155:2,3,12 156:20 157:14,15,16 158:10 158:11,12 159:17,20 159:21 160:14 161:1 161:4,12,13,16,17,22 162:11 164:14,20 165:18 166:19,21 167:11,17 170:21,23 172:4,25 173:19,25 175:4,6,11,16 176:6,9 177:10 218:1,11 221:9 223:4 225:23 226:4,6,7,17,23 227:5 227:9,11 240:24 241:3,4 242:5 244:20 260:16</p> <p>permits 61:15,22,23 62:23 66:7,11 67:2,3 111:24 124:17,18 125:14 128:15,17 131:21 136:4 138:2,4 138:14,15 155:15 163:10 165:9 166:11 173:18,22,22 182:14 217:15 219:1 221:16 222:15 223:9,23,24 224:5 226:3,14,22 230:17</p> <p>permitted 67:17</p> <p>permittee 132:9</p> <p>permitting 60:19 125:10 127:14 128:13 129:13 137:23 247:2</p> <p>person 22:12 121:17 125:16 136:10,23 137:1,3 151:24 152:5 152:9 181:25 235:9</p> <p>personal 92:17,20 132:4 250:12</p> <p>personally 47:25 57:25</p> <p>personnel 20:18 222:25 223:25</p> <p>persons 43:5</p> <p>perspective 16:24 17:8 17:24</p> <p>persuaded 257:22</p> <p>persuasive 245:9</p> <p>pertaining 22:18</p> <p>Peter 1:12</p> <p>phase 106:16</p> <p>phone 171:11 213:5</p> <p>phrase 219:23</p> <p>physical 192:7,13</p> <p>physically 167:11</p>	<p>175:17</p> <p>pick 240:5,12</p> <p>pipe 98:11</p> <p>pipes 84:17 87:4</p> <p>place 31:21 113:17 128:3 129:24 134:14 136:5 137:24 153:14 153:20 154:1 228:8 228:12 229:4,24 230:22 239:5,7</p> <p>placed 198:17</p> <p>plaintiff 48:14</p> <p>plaintiffs 13:12,18</p> <p>plan 42:25 43:1 166:13 210:23 223:16 248:6 250:21</p> <p>planned 43:9 195:23</p> <p>planning 99:4</p> <p>plans 20:17,22 192:22 195:6 251:25 252:15</p> <p>plant 21:18 65:20 67:11 75:3,7 83:19 94:22 96:24 206:5 251:13</p> <p>plants 23:14</p> <p>plausible 234:5</p> <p>play 28:2 36:16</p> <p>playing 218:17</p> <p>plays 237:2</p> <p>pleading 48:10</p> <p>please 10:16 33:22 54:25 123:8 148:3 164:12 169:9 210:8</p> <p>pliers 216:8</p> <p>plus 95:13 188:6</p> <p>point 3:21 4:14,17 5:5 43:12 45:7,8 47:6 57:13 96:5 112:1 116:22 118:5 127:20 138:20 145:8,25 146:3 149:7 162:19 168:4 188:2 189:11 200:18,25 201:1 208:14 210:20 212:13 236:5 239:12 240:22 248:21 250:5 253:12 258:3</p> <p>pointed 243:15</p> <p>points 96:5 200:20 241:18</p> <p>policy 124:21</p> <p>pollution 66:18</p> <p>pooling 197:24</p> <p>poor 246:4,5</p> <p>poorly 17:1,10,25 22:3</p> <p>portion 19:8 24:6,14 33:21 35:21 47:4 102:12 122:21 172:3 188:6 237:4,5,10 238:22,23</p> <p>position 3:24 4:2 7:22 57:17 118:20 122:19</p>
---	--	--	---	--

<p>123:23 222:7 253:10 positive 210:18 possession 209:21 210:19,25 228:13 possibilities 98:13 possible 53:18 105:7 261:10 possibly 8:13 59:15 162:2,3 post 55:16 177:22 178:9 postage 147:18 posted 177:17,20,21 post-closure 58:13 60:3 post-graduate 55:13,15 55:17 post-petition 246:3 Potemkin 230:12 potential 9:1 66:18 121:21 128:25 power 182:23 powers 5:11 182:1 184:2 198:7 practical 219:25 220:23 practice 124:1 pragmatic 219:25 220:23 pre 246:3 preamble 67:13 precise 38:16 precisely 5:4 87:9 predated 62:25 predicted 104:23 predicting 110:10 prediction 89:11,16 predictions 101:23 predicts 89:21 prefer 259:22 preferable 107:1 preference 97:11 178:21 preferential 247:15 prejudice 119:9 prejudicial 116:12 preliminary 117:14 136:16 premature 170:21 premises 83:24 prepare 26:18 56:24 61:1,20 90:15 110:1,3 232:25 prepared 61:4,8,14,22 83:7 85:5 88:22 119:4 preparing 62:5 preponderance 241:11 present 54:13 78:15 133:7,25 149:8 256:20 258:25 presented 145:8 149:13 197:1 202:5 203:18</p>	<p>241:24 257:7,9 presently 258:21 preserve 182:12 247:20 president 17:6 21:5 22:17 41:20 248:7,9 248:14 pressed 196:15 presumably 236:8 presume 7:22 Presuming 142:4 150:24 154:15 pretax 204:9 pretty 79:6 146:18 198:6 222:3 238:3,18 241:13 prevent 41:14 255:4 256:7 prevented 163:24 previous 73:1 152:8 previously 7:25 62:9 177:5 218:17 pre-bankruptcy 80:14 pre-petition 238:14 prices 188:22,25 211:3 211:4,10,15,18 212:2 212:8,23 244:2 primarily 61:6,9 71:14 92:11 113:25 primary 68:25 79:19 96:9 182:25 Prime 219:14 220:11 principal 36:6,21 205:4 205:12 257:25 258:1 principals 257:24 258:2 principle 261:2 printed 217:20 prior 68:21 77:15,20,24 78:21 80:14 86:4 91:4,16 103:15 138:11,12 145:9,20 160:21 168:24 169:5 174:1 177:17 212:19 213:5,13 214:11 218:3,7 222:6 248:19 private 109:16 124:1 pro 85:4 102:4,5 105:4 195:7 204:14 207:17 207:20 208:9 237:19 237:21,22 238:5,15 245:17 proactive 218:14 probable 220:5,9 252:8 probably 35:21 56:6,10 58:2 60:16 86:5 87:14 91:11 101:14 141:13,13 153:18 170:11 177:12 245:18 probative 116:13 119:8 problem 44:14 48:12 68:25 79:10 86:24 102:24 112:16 121:9</p>	<p>168:11 200:4 249:10 252:24 257:25 258:1 260:25 problematic 26:12 problems 17:18 18:6,9 19:22 44:10,17 45:2 47:20,20,23 68:20,24 69:2,11,23 70:7,9 78:14 83:17 98:16 210:6 212:7 214:3 216:21 218:22 249:12 249:17,19,20,21 250:2,8 260:17 procedure 124:21 128:20 proceed 180:2 218:12 223:4,13 224:17 225:13 proceeding 3:11 5:25 6:5,19 29:3 116:4 185:17,23 186:3 231:25 proceedings 1:6 115:19 115:20 156:5 261:13 261:17 proceeds 7:5,7 192:1 233:14 236:7,13 257:18 process 60:19 129:12 132:20,25 135:10 140:16 161:6,9 172:24 173:19 195:6 231:16 processing 227:18 produce 87:13 245:16 produced 89:9 96:16 190:11 233:1 243:2 243:14 producers 211:12 producing 87:11,15,23 production 105:23 109:19,20 110:6,14 professional 55:20,24 247:5 profit 182:10 191:15 220:20 profitability 211:17 profitable 209:14 220:25 232:9 235:3 244:3 profits 204:9 proforma 86:10,25 87:6,21,25 program 62:25 66:21 124:12,16,22 131:4 programs 56:7 progression 250:4 project 16:17,20 57:19 58:1 projected 85:5 87:12 223:14 projecting 87:25</p>	<p>projection 89:19 205:18 projections 15:9 86:23 205:15 237:6 245:1 projects 20:25 22:7,8 promise 189:15 190:9 promissory 50:21 52:17 179:13 promote 247:14 proof 8:7 144:15,18,21 149:12 160:19 161:21 161:23 179:2 227:14 233:18 241:10 248:9 248:15 proper 44:15 70:10 183:22 properly 18:16 87:7 124:16,22 133:24 properties 219:6 property 13:1 14:12 16:4,6 128:18 137:16 183:1 188:17 189:18 189:20 247:19,21 249:10 propose 185:13 proposed 40:14 41:8,16 183:23 191:12 199:13 200:1 253:17 257:8 257:20 259:3 261:6 proposes 200:24 proposing 199:9,10 proposition 103:3 114:23 117:23 proprietor 184:8,9 prosecute 182:2 prospective 227:12 protect 182:12 183:9 Protection 45:24 56:23 71:7 72:22 75:15 120:13 123:13 133:3 136:2 164:23 168:17 168:23 169:22,22 216:13 218:15 protects 139:8 prove 160:17 225:5 235:3 241:14 proven 144:5 provide 51:24,25 58:9 60:3,6 74:8 88:14 94:21 160:17 161:25 162:22 163:6,12 168:2 179:21 181:5 191:8 197:5 198:15 199:20,24 200:5 204:5 212:16 214:7 216:12 224:4 240:19 253:14,17,18,24 254:12 255:21 257:10 provided 17:19 18:7,25 19:23 25:14 49:16 57:1,23 95:9 98:25 99:1 126:8 167:23</p>	<p>169:4 172:4 201:8 221:7 222:9 253:25 254:3 provides 101:2 115:3 118:1 180:23,24 181:8 providing 88:11 254:10 256:15 proving 232:3 provision 51:6 174:10 180:15 184:5 194:15 226:1 256:13 260:21 261:8 provisions 5:15 260:20 PSM 102:23 public 100:10,16 109:13,14 114:2,9,10 114:13 115:4 134:2,2 134:4,16,18 172:22 172:22,25 173:3,5 publicly 190:10 pull 206:13,13 puppet 235:11 purchase 86:1 184:6 211:15 213:23 purchased 34:17,19 213:22 purchasers 36:7 purely 160:15 purport 185:4 purported 44:20 purporting 39:9 purports 146:10 purpose 14:7 22:4 40:21,23 57:7 95:23 95:25 97:16,17 180:9 182:9,25 196:1,12 200:23 201:14 purposes 145:10 199:18 219:24 260:12 pursuant 5:14 29:7 115:5,21 195:24 196:4 201:8 pursue 48:4 put 31:16 44:13,15,20 46:16 59:24 97:12 101:6 154:10 163:1 183:22 185:20 186:8 192:22 196:4 199:15 205:18 206:12,18 216:10 225:7 228:2 229:8 236:2 237:14 241:20 242:20 250:21 250:24 251:18 256:3 puts 172:21 251:23 255:21 putting 9:14 86:22 176:5 204:15 251:12 PVC 60:25 p.m 177:16</p>
---	--	---	---	---

quality 57:1,5 quarter 15:16 27:5,7 187:24,25 188:1 question 3:18 6:25 8:2 8:21 25:16 26:5,14 28:14 31:6,20,23 32:1 32:4 33:9 34:9,12 35:11 38:14 51:3 52:13 64:25 82:13,15 93:7 94:18 95:1 99:17 100:25 101:25 107:4 108:11,13,16 108:18 113:22 119:2 128:4,5,7,8,11 129:22 129:25 130:3 131:15 136:7 141:16 145:16 153:12,19,22,23,25 154:12 156:7,10,23 157:20 158:8 159:16 159:16,18,20 160:10 162:16,23 163:21 164:10 172:8 174:23 175:9 176:4 182:3 183:7 184:22 185:24 186:9 189:2 194:4 195:15,20 196:2,5,6,9 196:10,19,22,24 197:10 198:12 202:18 203:2,3 205:14,24 214:17,17 229:6,8,22 238:4,9,18,25,25 239:1,20 245:9 255:12 questionable 197:6 questioned 206:11 242:23 questioning 83:2 156:15 163:25 166:17 206:16 questions 31:17 32:12 43:10 48:20 53:12 90:23 105:25 113:24 114:1 155:23,24 156:9 157:4 160:5 165:3 175:25 178:16 197:14,15 214:18 quibble 118:16 quick 72:6 176:4 quite 50:7 157:24 202:4 203:15 quo 247:20 quotation 197:22 <hr/> R <hr/> R 1:7 raise 9:14 raised 3:19 5:20 8:1,21 185:14 187:15 197:16 198:11 203:24 raises 6:24 raising 197:14 ramifications 155:11	155:13 random 240:13 range 91:13 95:5 rate 86:1,4 211:15 240:20 244:5 rated 85:25 rationale 183:3 RCRA 226:3,4,22 247:14 reacting 214:2 reaction 214:9 read 31:19 33:8,21,23 34:11 94:17 95:19 99:13,15 107:6 112:20 146:15,18 160:11 170:14 184:1 197:21 217:23 226:20 258:11 reading 99:24 120:22 174:5 216:18 readings 121:6 122:12 ready 178:21 real 4:21 6:25 36:11 72:6 82:10 183:7 195:25 216:6 233:10 233:12 235:4 239:20 239:20 244:16 245:9 reality 215:7 221:2 224:6 realize 161:20 really 26:11 47:5 107:5 116:21 119:1 121:8 143:10 156:13 174:22 180:20 188:12 203:4 207:8 208:2,7 214:13 224:23 228:22 230:1 230:23 239:1 240:4 240:14 255:11 Realty 13:8 reason 10:10 49:11 50:12 53:23 105:8 108:24 109:4,6 122:2 153:9 172:1 188:24 189:2 239:21 246:19 252:2 reasonable 16:14 202:10 212:4 reasonably 26:23 190:2 reasons 212:21 219:22 259:15 rebut 111:5 113:9 122:21 162:7,20 179:4 190:19 rebutts 113:16 160:12 162:8 rebuttal 54:3 85:18 110:25 111:2 126:12 126:14 127:9,25 128:3 129:21 153:10 158:18,21 159:24 160:5,9 162:16 163:22 176:25 224:13	rebutted 191:6 rebutting 128:2 recall 23:10 27:17,19 36:23 37:5,24 40:17 43:13 53:19 68:14 72:17 75:19 76:10 77:2,17,25 95:20 99:23 103:16 203:1 204:19 Recalling 63:16 recast 205:17 receipt 147:10,16,19 148:9 177:25 178:5,7 178:7 receipts 146:7,11 receivable 28:15 receive 14:15 45:3 59:9 70:13 72:10 73:4 85:16 100:2,19,20,23 125:23 134:19 received 7:4 36:6 66:6 71:3 72:15 73:15 76:16 91:20 100:3 103:17 108:12,13 112:19 132:17 135:13 138:9 139:7,14,18 141:10 142:5,8,15,22 142:24 143:1,8 144:1 144:9 145:14 148:13 167:13 178:2 179:13 185:25 197:8 204:24 receiver 59:14 150:14 receiving 68:15 157:17 recess 63:15 116:2,25 117:1 178:22 179:7 recipients 52:25 recitals 255:24 recognized 79:8 recollection 28:1,8 40:20 72:7 recommence 63:19 recommend 107:24 recommendation 106:6 reconcile 137:6 reconsider 160:6 259:7 259:10 reconstructed 69:9 reconvened 117:2 179:8 record 10:17 33:23 54:25 62:1 123:8 133:19 191:15 193:18 213:23 224:19 225:5 228:25 229:7 recorded 66:12 70:23 122:3 131:14,17 records 65:4 86:19 90:7,11 114:2,9,13,14 recourse 231:3,24 235:9 Recovery 124:4 247:12 248:24	RECX 2:4 redesignate 252:20 redesigning 97:11 Redirect 48:22 106:3 176:1,2 REDX 2:4 Reed 2:8 110:25 111:4 111:18 112:9 113:1 113:16 116:14 122:21 123:2,4,7,9 130:21 148:24 150:10 153:24 156:11 157:3 159:2,7 160:5 163:20 166:18 167:7 176:4,15 216:15 218:6 221:4 222:3 225:15 227:1 Reed's 112:15,20,22 116:22 260:16 refer 130:20 225:21 reference 75:6 219:21 referenced 49:23 67:7 references 181:22 referred 48:25 50:5,10 57:3 84:25 130:16 156:2 173:8 189:19 225:17 226:1 248:23 referring 50:12 97:4 115:13,15 172:24 191:22 refers 225:23 226:3,13 226:17,21 refiled 48:8 reflect 121:5 161:11 reflected 29:14,15 117:13 reflections 122:12 reflective 119:10 reflects 121:20 146:25 refuse 44:23 refused 44:12 refuted 245:18 regard 12:25 53:20 64:15 102:3 112:14 113:9 118:24 121:15 168:7,8 171:3 203:19 204:17 207:6 256:1 regarding 15:9 20:23 21:6 22:11 24:14 25:15 43:25 44:1 45:2 52:12 56:2 58:4 60:19 70:14 80:21 83:7 84:12 85:5 92:23 93:11 97:10 99:10 100:1 104:10 108:4,12,22,25 109:18 117:19 149:20 151:10,14,18,22 152:22 153:2 173:14 178:21 206:2,18 243:23 255:21 regards 57:18 58:19 59:12 124:20 164:25	172:5 173:17 regretted 213:18 regulates 66:17 regulation 177:15 regulations 46:6,25 76:19 78:25 94:23 110:8 131:22 227:6 regulators 109:16 regulatory 62:9 63:3 72:14 158:12 159:22 160:21 164:16,19 reimburse 107:8,10 reissued 88:25 reiterate 248:18 relate 118:17 119:6 217:8 related 196:21 198:24 214:19 relates 74:13 156:19 218:10 relating 12:25 103:14 103:18,22,25 125:10 172:18 199:18 213:22 relation 165:13,15 244:2 relationship 10:23 27:9 39:25 234:4 246:5,7 relationships 195:23 release 174:3 218:4 231:9 relevance 18:11 35:8 64:16,22 80:24 107:2 116:12 relevant 107:16 115:18 128:3 129:25 153:15 153:18 227:10 reliable 109:20 rely 233:24,25 237:15 relying 105:12,20 190:9 226:11 remain 96:2 189:20 remaining 97:6 205:5 remains 7:21 remanded 135:7 remedy 253:11 remember 15:23 40:22 40:23 64:2 68:6 97:4 99:24 157:7,11 164:9 229:19 239:14 remove 42:13 253:9 removed 79:18 112:23 112:24 113:19 230:25 251:23 252:25 rendering 39:9 261:3 renewable 23:6 138:2,4 renewal 68:14,18 77:4 77:14,19 126:23 127:16 136:11 138:7 138:9,18 139:15 141:3,5,7,9 142:1,21 143:8,15 144:4,6 146:11 147:14 148:15
--	--	--	---	---

150:10,18,25 151:11 151:15,19 152:23 154:16,17 157:7,13 157:17,20 158:2 167:11 168:24 169:3 169:5 170:23 177:9 renewals 138:19,21 154:22 renewed 139:11 140:22 151:6 rent 30:21 33:9,14,17 33:18 rents 33:3 repair 81:8 95:11 97:7 98:20 repaired 87:7 92:14 repairs 69:5,7 94:12,19 94:20 95:10,13,17,18 97:25 98:4 107:11 221:1 repayment 256:8 repeat 130:2 131:15 164:11 169:1 repeated 227:6,13,22 227:24 replaced 149:17 replacing 98:17 reply 222:1 report 82:2,3 115:4,7 118:21 122:10 124:25 125:1,4,7 208:1,4 Reporter 1:18 reporting 62:1 115:11 133:19 reports 45:3 62:3 74:8 98:5 115:18 116:6 117:11 118:18,24 121:5 122:7 repository 229:16 represent 39:9 representation 9:19 representative 31:10 representatives 120:12 120:16,23 Repurchase 248:4 request 18:20 58:10 134:10,11 151:5,25 152:2 160:10 171:9 171:13,18 173:3 requested 167:20 172:12 177:25 requesting 165:23 requests 25:11 143:14 require 101:5 130:10 163:8 227:23 254:16 required 55:23 66:22 69:4 81:2 82:4 102:16 108:6 132:21 134:23 151:22 171:20 179:22 183:15 185:18 195:22 196:11 199:25 223:10 260:12	requirement 57:6 77:22 107:7 166:10 171:6 175:20 223:8 236:12 requirements 18:24 45:23 55:23 56:2 58:3 62:1 92:12 124:24 125:10 129:6 129:11 133:18 164:21 171:7 200:2 259:16 requires 4:20 55:24 66:3 74:5 79:5 96:1 101:7 152:1 164:23 194:8 196:12 260:11 requiring 66:21 res 180:11 182:12 183:9 184:19,20 rescheduled 242:3 research 118:10 198:11 261:1 reserve 29:21 159:11 reserved 29:24 reserves 236:11 resign 37:3 resigning 36:25 resolution 4:20 resolve 3:21 4:17,21 8:21 165:21 resolved 3:20 71:22 74:19 Resource 1:3 3:2 12:5 38:8,23 39:18,23 43:6 63:16 124:4 131:4 132:9,11 137:18 141:5 175:14,15,21 192:8 247:11 248:24 resources 250:15,17 respect 45:15 180:1,4 200:4 208:19,22 211:4 216:15 221:4 255:11 respectfully 6:22 184:25 respective 233:23 respond 179:3 responding 85:19 response 32:11 118:19 120:3 134:24 143:14 172:9 206:15 222:11 228:17 responses 82:8 229:21 responsibilities 60:18 60:22 122:13 responsibility 29:23 225:4 responsible 92:9 135:24 136:1,11 137:4 150:20 151:4 152:1,8,13 175:6,10 222:11,15 239:2,7 responsiveness 134:24 rest 19:10,11 39:7	restate 64:14 result 41:6 46:4,8,9 71:15 119:21 230:9 230:10 249:5,8 resulted 92:2 260:24 resulting 115:21 246:24 results 193:5 resume 9:10 63:13,19 164:5 Resumed 64:6 retail 244:5 retain 184:6 retained 238:23 retroactively 149:15 return 147:19 148:5 177:24 returned 177:23 returns 243:17 revenue 23:2,3 85:23 87:6,25 105:7 206:9 revenues 238:22 256:8 reversing 247:7 review 58:15 60:24 61:11,13 65:21 66:7 68:19 70:16 116:25 117:13,16,17 118:11 118:15 120:11 124:18 125:23 127:3 131:9 131:24 133:8,14,15 133:23 135:3 140:2 162:24 164:24 166:4 168:20 171:1 210:3,8 221:5 reviewed 15:8 16:17 85:4 140:14 reviewing 127:12 134:1 153:4 158:10 159:20 164:14 227:4 reviews 154:22 revoked 230:25 RFP 89:14,15 Ridge 224:3 right 4:13 6:22 8:21 9:9 9:23 21:9 24:17 27:9 28:22 30:19 31:3 35:5 36:2 39:21 46:11 47:12,17 49:19 50:24 51:9 57:15 67:10,15 83:14 87:16 93:17 98:3 102:10,14 102:18 105:17 116:24 122:23 125:14 144:22 147:1 155:3 157:19 158:7 159:4,11,15 160:1 161:15,20 162:15,18 164:18 167:20 170:21 171:8 172:7,11,14,15,23 173:1,6,12 175:5,18 178:14,15,20 179:24 181:14,17 182:3	187:8,9,15 188:5 191:21 194:6 196:8 197:15 199:20,21 201:22 204:2 205:16 205:19,23,25 206:6 214:1 217:4 220:8 221:8,15,16,24 224:14,16 225:20 227:7,10 230:2 232:4 236:11,16 237:13 238:6,16 240:9 241:16 243:2 251:13 251:16 255:10 258:9 258:10 260:8 rights 7:9 43:21,22 58:21 186:5 247:21 247:24 258:8 ripped 44:15 rise 44:2 211:19 risen 70:2 rising 188:22 211:3 Rob 59:2 Robbins 124:3,4 Robert 1:14 role 16:25 20:14 23:13 28:2 36:16 40:19 59:12 roles 124:6 Room 1:20 roughly 95:6 105:10 round 157:6,6,10,13 158:1 routine 66:8 routinely 66:12 70:16 70:22 88:14 117:15 120:4 131:6,9,13,17 RPR 1:18 261:16 RTC 3:9 4:4 16:22 17:6 17:19,21 18:4,25 19:20,23 20:15 21:22 27:20,22,25 28:3,7 38:5,11,15,20 39:1,2 39:8,13 43:11,15,18 43:22,25 44:2,7 45:9 45:14,21 46:3,15,18 46:19,25 56:16 57:9 58:12,19,22,24 59:1 60:5,25 61:4 65:20 66:5,25 68:13 69:16 69:21 71:1,21 72:14 72:23 75:7 77:13,23 80:8 81:2,5 89:19,19 90:11 91:4,19,21 92:3 93:20,23 97:12 100:23 101:2 103:8 103:17,25 106:12 108:10 111:4,8,20 113:18,19 127:18 139:12 141:7,9 143:15 146:11 150:25 151:11,24 154:17 155:6 161:12 165:18	165:18 174:16,20,25 176:6 189:9 193:15 209:9 210:19 212:17 214:8,11 222:14 223:3 228:2,9,22,23 229:3 234:12 238:1 238:14 239:8 242:24 244:2,3,4,4 249:5,21 RTC's 17:24 39:6 46:4 46:8,9 68:20,22 69:12 75:2 77:3 92:19,22 103:14 120:3 155:1 rule 65:5,5 82:4 114:1 114:18 115:1,3,3 116:3 117:9,15,20,21 118:1 119:17,23,24 120:7 121:16 rules 193:25 228:4 ruling 122:17 160:7 Rumpelstiltskin 234:12 Rumplestiltskin 27:10 27:16 40:2,10 209:11 234:11 run 87:9 209:12 214:8 running 78:9 79:12 96:5 179:18 206:9 216:3 Rust 87:14 89:10,13,15 89:21 101:9 104:10 104:15,24 109:22,24 110:13 208:4 R-e-e-d 123:10 <hr/> S safe 247:3 sake 251:24 salaries 238:17 salary 35:17,20 38:7 207:11,12 237:25 238:3,7,8 sale 233:11,14 244:6,13 Sales 247:5 saloon 231:2 Sangamon 40:15 122:20 199:2 207:21 223:2,4,5 224:5 239:16 240:24 241:4 sanitary 227:8,9 sat 187:14 Satisfaction 246:18 satisfactory 149:13 satisfied 161:24 162:12 satisfy 248:8,15 save 174:12 224:12 saves 156:14 saw 72:8 73:1 85:10 104:7 141:18 236:18 239:13 saying 4:23 5:1 74:7 103:7 118:19 194:21 194:22,23 196:19
---	--	--	--	--

198:5,23 226:2 241:19 250:5,7 256:11 says 25:7 51:23 59:14 96:11 107:10 120:14 146:23 161:9 170:14 211:10 219:22 224:7 232:25 233:3,17 235:20 238:9 244:11 252:19 253:4 Scattered 7:5,23 8:15 11:7,12 22:23 24:5,13 24:21,25 25:4,15 40:14,25 41:6 42:7,9 42:21 50:17 51:24 52:7,19,20 183:14 186:10,11 187:8,21 188:4,15,21 189:3,16 189:21 190:19 191:19 194:9 196:3 202:21 211:22,24 213:20,20 229:12,14 230:14 231:5,11,17 232:5 233:7 234:5 235:6 243:22 Scattered's 244:13 schedule 165:25 172:6 195:24 scheduled 130:9 schemes 180:20 Schmetterer 248:3,5 Schmidt 1:12 62:11,21 64:13 65:2 68:11 73:23 77:5 79:2 80:24 81:18,24 82:3,7 82:24 83:5 85:15,20 90:14 91:2 93:10,13 93:15 94:8 99:5,7 100:5,7 104:3,4 105:24 106:1,21 107:2 108:15 109:1,9 109:25 117:4 179:2 206:11 Schmidt's 206:16 science 55:9 scientific 249:2 scope 122:13 156:11,17 158:15 score 202:18 scouring 232:13 scratch 241:2 screen 130:24 139:23 146:25 181:7 236:3 scroll 67:12 72:6 140:25 141:12 147:23 152:18 scrolled 236:17 scrolling 150:6 scrutiny 172:18 216:17 SCS 104:18,22 se 143:11 second 51:1 52:3 81:6	93:20 99:24 106:16 115:16,17,17 181:13 182:5,17,20 185:21 195:15 203:24 214:14 219:10 221:13 251:18 254:20 Secondary 69:2 secondly 179:14 Secretary 183:17 section 107:9 116:14,15 118:22,23 123:24 125:2 126:5 138:10 148:17 151:17 152:6 158:11 164:22 167:17 173:23 174:1 180:5 180:13 184:2,11 197:21 200:2 216:15 217:5,10,23,25 218:2 219:24 221:13,13,13 221:15,23 222:18 225:16 236:6 247:8 256:3 260:22 sections 124:19 126:6 217:8 221:7,11 section's 146:1 secure 89:14 secured 12:9 50:14 securities 28:25 182:20 security 184:7 189:12 189:17 191:20 see 9:3 53:10,23 82:10 84:16 91:20 93:14 104:9 120:25 126:5 131:1 139:14,18 147:5 152:19 170:14 174:5 181:20 184:3,5 189:22 194:2,15 196:23 198:19 199:6 200:3 210:10 226:12 236:7 240:2,3 257:22 seeing 18:16 72:17 75:19 77:2 seek 113:4 190:4 seeking 118:19 162:14 seen 25:22 75:17 76:11 76:12 77:1,6 85:8 89:17 101:18,19,23 146:8 171:21 172:9 221:19 233:5,6 243:15,16,19,20,21 250:19 sees 236:12 sell 188:16 233:12 seller 246:17 selling 211:25,25 semi-annual 62:2 senior 50:14 sense 4:14 37:14,15 112:12 152:20 207:1 208:3 249:18 sent 66:1 73:4 100:9 147:4,11 181:22	sentence 94:20 separate 39:14 66:25 67:2,18 180:17 221:7 separately 194:3 September 56:14 132:16,18 series 240:9 serious 189:7 193:25 seriously 235:15 served 47:17 service 22:22 47:11,13 206:17,18 services 30:6 39:10 58:9 60:7 240:19 253:17 254:11 set 3:2 7:14 43:21 50:18 53:20 68:2 118:3 135:21 179:12 184:2 199:15 244:18,24 256:7 sets 171:8 setting 115:5 settle 14:9 44:21 settlement 19:7,12 192:9 243:5,7 settlor 16:8 settlers 16:6 41:12 seven 24:14 sham 231:13 shape 193:15 shareholder 11:7,10 21:2 27:12 184:7 shareholders 7:22 shares 34:17,19,25 35:14,15 234:10 sheet 26:22 29:16 193:5 253:22 254:3 sheets 233:1 243:16 257:22 shell 191:17,25 228:21 228:22 243:10 shield 129:24 138:24 138:25,25 139:4,12 139:16 143:7,9,10 148:21 149:14 153:13 153:14,19,20 154:1 shields 111:19 shoestring 209:4 212:18 shops 12:16,18 shore 242:5 short 112:10 shortly 56:10 127:16 show 63:7 71:6 72:4 75:13 76:4,24 84:25 89:2 98:5 146:6 162:5,6 163:11 187:3 191:2 195:18 220:9 223:23,24 247:2 250:4 253:16 257:19 showed 45:9 96:17 104:14	showing 116:17 146:24 162:12 193:5 259:1 shown 179:23 189:10 222:5 shows 205:1 shut 78:2 sic 30:24 137:17 223:7 230:22 side 3:13 86:25 194:19 235:10 sides 254:8 sign 44:12 140:5,6 150:18 151:10,15,18 244:21 signature 148:11 150:12,12 151:1,23 signed 25:4 59:9 97:14 136:11 148:9 150:10 160:2 251:2 significant 61:25 127:2 129:2 130:10 165:22 165:24 168:12 173:5 239:12 246:9 signing 97:16,17 168:11 similar 5:3 117:11 166:20,24 similarity 182:13 similarly 47:15 simple 166:5 253:10 simply 26:4 85:19 98:25 159:20 200:18 212:14 214:2 sincerely 248:12 single 137:9,13,19,21 155:18 sir 30:25 31:16 32:22 39:6 45:1 144:24 145:12 154:23 sit 31:9 101:15 172:2 176:5 216:21 234:10 234:11 site 59:17 60:8 61:5 69:16,23 71:20 78:17 79:17,22 81:8,17 82:17,23 83:8 85:6 87:11,17 92:19 101:22 102:1 103:1 104:1,6,24 105:21 111:21 112:24 113:7 113:11 154:9 165:14 165:15 173:6,7 175:8 175:22 210:6 226:8 228:5 242:21 247:10 248:24 sites 17:1,9 19:5 22:5 22:19 23:3,6 46:14 192:22 194:16 196:21 198:25 204:24 207:18 211:25 212:1 224:2 226:22 228:5,6 235:19 255:25	sitting 111:23 situation 96:21 145:22 196:16,24 201:2 210:23 211:6 222:19 252:25 260:16 situations 118:2 six 62:3 123:21,25 170:11 241:6 242:15 size 66:19,24 skill 119:3 skills 118:12 slender 258:11 slew 129:14 Sloan 2:7 54:15,21,24 55:1 62:13 63:18 64:8 88:6 106:5 110:18 206:1,8 207:6 210:5 211:1 245:2 Sloan's 206:7 207:24 245:11 smell 44:23 smoothly 249:13 soil 70:11 92:17 sold 87:19 89:5 102:6 182:20 188:20 189:20 235:2 sole 7:17 10:25 11:12 12:9 21:6 27:20 183:12 solely 132:11 150:13 196:21 solid 58:7 63:1 207:22 251:10 solve 98:16 somebody 136:10 190:24 201:24 soon 21:5 189:1 sorry 12:20 26:10 37:8 42:17 55:16 62:11 94:9 101:2 111:6 117:7 128:6 131:8 132:1 141:20 142:5 142:10 161:2 165:13 169:14 175:5 205:12 223:3,19 sort 117:23 122:4 133:20 134:8 183:23 193:10 230:15 sorts 44:16 sought 6:18 117:12 163:7 179:16 191:25 194:10 258:16 sounds 57:15 source 62:2,25 66:20 66:21 67:5,6,16 74:13 126:8 128:23 129:4,8 130:8 131:20 132:5 132:23 133:11 134:5 137:9,13,14,14,20,21 139:1,5,8 144:10 155:13,18 157:15 164:25 166:1,8,11
---	---	--	---	---

220:25 227:4 230:6 237:7 238:7 250:17 256:15 sources 22:21 27:2 66:17,18 115:22 116:17 119:18 157:18 157:18 202:6 South 1:19 13:1,14 14:12 30:13 31:25 33:15 38:8 39:19,23 175:15 188:16 222:14 Southern 219:19 220:14 space 30:13,16,19,20 30:21 32:1,7,18,20,24 32:25 33:1,4,10,14,15 33:17,18,20 speak 11:19 77:7 speaks 115:2 special 118:12 119:3 specific 13:5,7 14:9 67:9 171:20 specifically 63:2 71:3 96:9 159:11 182:1 217:5 226:10 227:3 236:11 specified 201:7 specify 110:9 speculate 110:2 199:11 199:14,22 speculation 214:2 237:13 spell 10:16 54:25 123:7 171:16 spelled 123:9 spend 252:23 spinning 233:17 Springfield 20:8 44:14 61:12 112:23,25 113:2,7,11 161:17 204:21 207:18 square 89:18 squarely 119:21 120:6 staff 125:3,6 stages 3:17 stair 89:10 stamp 141:11,19 146:12 152:16,19 stamped 142:14 143:1 150:3 stamps 143:5 stand 9:14 63:19 128:4 128:7,9 197:16 225:16 227:2 232:16 234:3,23 242:24 standard 62:3 128:20 198:7 241:11,12 standards 62:25 74:14 246:18 standing 64:20 stands 155:3 start 37:25 62:13 71:5	204:21 240:9 241:19 started 88:23 153:4 231:16 242:9 starts 238:5 state 5:15 10:16 54:24 55:21 91:16 95:4 117:13 123:7,12 124:16 168:9,15 170:8 180:23 181:5,8 181:11 224:2 227:14 stated 65:14 219:14 247:8,13 248:6 statement 22:15 26:24 27:1 46:7 122:18 160:16 224:23 233:5 254:3,14 statements 26:19 27:4 115:19 193:9 233:3 243:16,17 257:23 states 1:1 67:15 120:9 140:13 177:15 178:9 182:8 State's 183:17 stating 168:19 status 14:1 68:10,17 71:16 75:23 88:12 93:6 111:12 127:23 128:13 129:4,10 155:1 176:6,8 196:5 247:20 statute 5:21 174:10 216:18,23 225:16 236:9 statutory 5:15 6:9 260:19 stay 237:5 247:7,9 stayed 86:4 Steinberg 19:19,23 20:4 47:16,20,24 step 53:13 110:17 176:14 178:17 stepped 117:4 251:1 stepping 89:10 steps 79:9 80:15 stipulate 113:3 240:25 stipulation 80:6,17,20 81:1 93:12,18,19 94:16 96:7,11 101:1,2 101:5 102:15 107:6 113:8,22 156:8,13,15 156:25 198:23 199:1 223:5 224:6,9 stock 34:17,20 storage 226:8,22 storing 227:18 straw 251:22 Street 220:13 strength 255:6 strike 25:11 26:13 47:4 47:6 57:16 157:20 158:5 stringently 117:21	strong 186:23 250:10 strongly 232:1 sub 115:17 260:22 subject 6:4,9 26:3 82:11,12 145:21 156:11 248:25 sublease 32:5,7,19 submission 77:16,20 137:2 169:5 submissions 118:18 submit 116:8 133:2 151:19 170:13,15 171:23 submits 171:6 submittal 57:10 77:24 144:11 submitted 66:2 68:14 77:13 132:15 134:20 136:22,25 137:3 138:9 139:7 140:19 145:20 149:9 261:9 submitting 152:9 163:25 subparagraph 94:19 99:11,20 subscribe 211:9 subsection 217:11 226:13 subsections 217:16 substance 73:25 133:16 substandard 246:24 substantial 102:12 117:22 121:23 189:8 195:1,4,8 202:6,11 206:16 207:2 209:1 210:17 212:12 216:5 219:5 249:8,10 254:4 255:20 substantially 211:16 212:3 249:7 250:7 substantive 153:2 subtenant 31:1 successful 190:2 suddenly 252:3 sue 5:24 6:2,23 7:2,19 13:6 186:13,14 187:8 187:9,20 254:11 sued 5:24 6:2 7:20 13:5 13:7 48:13 181:9 193:1 253:7 suffer 119:9 suffice 145:10 sufficiency 203:23 205:14 sufficient 70:4 81:8 84:1 96:4,18 179:15 191:13 242:12 247:2 257:19 Sugar 36:7,8,13 37:6 37:11,13 48:24 188:11 suggest 106:25 109:24	112:8 239:23 suggested 241:7 suggesting 26:8 112:13 212:22 suggestion 191:10 suggestions 134:7 suing 181:9 suit 6:15 14:10 185:16 sum 43:21 summarizing 27:1 summary 134:24 222:16 sums 189:9 sunglasses 10:9,11 supervisor 140:7 supplied 83:12 support 137:16 suppose 149:19 236:2 supposed 72:10 100:9 199:8 232:23 sure 3:12 4:1 6:8,21 16:1 51:2 111:2 112:6 118:7 129:18 133:6,17,24 174:22 175:9 177:24 178:3 190:15 196:19 203:4 207:25 212:11 215:14 236:5 250:1,25 surface 239:16 241:2 surprise 214:24 surprising 215:18 219:4 susceptible 181:4 256:10 suspending 247:18 sustain 154:5 sustained 77:11 90:20 126:15 127:8 sworn 10:4,13 31:13 54:16,21 123:3,4 177:5 symbols 89:18 system 21:15 44:11,13 44:22 45:6 57:2 62:24,24 69:2,15,20 73:20,21 75:2,4,8 78:20 79:21 83:17,18 84:13,14,16 87:1,3 88:12 92:12 95:13 97:2,12,13,22 98:1,5 98:6,10,12,16,17,21 101:6 102:17 106:7 106:15,18,25 107:14 107:22 120:20 155:7 247:4 systems 63:3 209:13 Szilagyi 18:3,19 19:13 215:23 Szilyagi 18:7 19:6 48:5 48:9 215:8,9,9 Szilyagi's 47:11 215:22 S-l-o-a-n 55:1	T T 202:13 tailored 226:19 take 3:23 6:3 7:8 9:6,10 9:18 43:22 44:22 49:25 83:18 116:2,6 116:24 120:2 135:17 154:17 161:20 178:22 200:24 208:20 210:8 217:23 227:5 230:1 234:19 235:15 236:8 241:19 taken 10:9 20:14 80:15 138:15 194:3 takes 135:10 137:23 talk 59:1 180:2 231:4 talked 37:21 109:11 170:20 173:21 198:21 206:11 212:19 215:1 216:17 241:18 talking 8:17 45:19 58:19 80:5 161:18 174:9 190:23,24 191:24 200:20 207:1 210:14,17 214:2 225:23 235:22,23 238:5 251:12 tape 209:6 216:7 tax 3:15 30:3,7,10 243:17 Taylor 224:3 team 78:8 239:4,6,22 technical 92:23 124:20 133:14,15 technically 163:1 Technology 1:3 3:2 12:5 38:8,23 39:19,23 43:7 63:17 131:4 132:10,12 137:18 141:6 175:14,15,21 192:8 tell 12:1,4 13:4 19:18 31:14 32:22 33:6,13 40:5 45:8 68:7 78:11 120:18 127:21 132:7 146:12 150:4 177:8 245:7 252:23 telling 163:14 256:18 256:24 tells 232:22 234:17 temporal 93:7 ten 20:16 101:12 187:25 208:24,25 230:22 252:7 tenant 247:24,25 tendered 144:16,18,22 167:19 tendering 156:15 tens 46:13 term 52:2 68:4 157:15 180:19 181:11 215:19
---	--	---	---	--

<p>terminated 111:14 terms 50:1 69:22 113:20 171:17 183:24 204:7 terribly 233:11 terrific 136:4 test 46:23 testified 3:8 12:25 28:5 47:19 74:16 79:25 81:15 91:3 94:2 100:1 102:22 103:9 103:21 105:2 106:22 111:3,7,23 157:5 161:12 185:8 189:4 192:6,21 194:12,13 195:21 210:5 211:2 215:13,13 218:13 242:21 243:4,7 245:2 251:25 252:10,21 testifies 240:22 testify 10:10 23:23 50:25 51:2 62:20 95:15 102:11 110:6 111:18 113:1 160:20 162:10 204:20 testifying 82:11,12 105:15 226:14 testimony 9:10 25:11 26:3,9,14 53:24 62:8 62:15,17 79:3 81:21 82:16 83:1 84:12 85:16 94:5,15 95:7 112:22 113:17 116:22 121:17 122:22,24 128:2 129:19 153:2 157:25 160:13 161:8 162:8 163:15,20 164:6 167:10 168:2 183:11 186:22 187:10 189:1 190:13 191:9 194:17 195:12 201:13 201:16,20,21 202:9 203:5,16 205:20,22 206:1,7,18 207:5,7,25 208:6,8,12 213:16 214:15 218:6 222:4 227:1 232:7 233:22 234:24 240:23 241:14 242:14,18 244:11 245:4,5,5,8,11 248:23 252:16 257:14,24 260:17 testing 133:20 Texas 202:11 233:17 245:20,21 Thank 8:23 9:4,24 16:11 23:19 26:15 54:14 58:23 62:21 63:14,22 65:2,15 67:14,20 72:2,19 75:9 83:5 85:2,20 106:1 110:15,19 119:15</p>	<p>124:9 137:8,25 142:16 149:22 164:8 165:6 166:15 167:3 176:10,15,16 179:5 179:24 224:14 225:10 261:12 Thanks 248:15,17 theirs 241:9 theory 189:23 thing 133:20 134:8 140:11 147:5 161:10 162:7 175:1 223:1 243:25 248:22 252:15 253:15 things 21:21 44:8 48:1 167:8 170:7 171:22 179:23 189:6 190:17 203:8 205:9 211:19 214:21 230:4 241:6 253:24 think 3:6,11 4:17,18 5:22 21:5 25:20,21 26:1 27:14 31:4 37:25 38:8 53:7 61:11 63:10 68:5 69:18 72:25 74:2 84:4 102:21 104:7,20 110:4 111:11 112:9 112:12,18 113:13 116:16,20 121:20 136:3 141:18,23 145:18,21 154:11 161:6,7 168:3,8 170:16 173:23 179:20 181:21 183:6 185:9 187:18 188:19,24 193:13,20 194:13 199:22,25 200:3 201:1 203:2,22 206:7 206:25 207:5 208:19 209:18,19 210:3 211:1,18 212:3 213:8 216:17,24 218:16 219:13,21 220:10,11 221:4 222:16 223:17 224:25 225:15 226:10 227:19 230:9 232:2 232:12 233:25 236:22 238:24 239:14,20,24 245:11 250:18 252:2 252:5 253:13 254:20 255:10 258:11 thinking 161:3 thinks 225:14 third 17:15 27:5,7 81:6 93:20 96:8,12,19,21 103:10 105:3 175:5,7 179:17 197:6 third-party 187:6,12 189:23,24 190:3,5 199:3 201:10 258:10 Thirty-nine 217:12,14</p>	<p>thoroughly 260:19 thought 51:16,17 52:1 53:7 93:5 95:19 141:21 153:9 157:24 164:3 204:6 225:16 226:15 227:3 229:3 thousand 35:24 thousands 46:14 233:18 three 50:23 67:8 74:16 86:3 105:8,9 123:22 123:25 126:24 135:17 135:19 162:4 171:11 171:22 179:11,22 181:18,18 200:20 206:12 207:18 208:9 220:7 221:6 231:8 235:19 260:1 three-to-five 154:20 161:5,9 thrive 220:20 throw 204:10 252:15 time 7:12 12:7 14:2 36:24 41:1 42:14 54:9 56:20 59:25 61:11 72:8 73:1 76:12 79:7,8 80:1 81:11 83:25 86:5 89:23 90:2,10,24 106:13 111:8 127:21 129:4,10 132:24 134:3,4,9,14 135:4,10 143:13 144:14 154:20 155:10 156:14 158:1 166:2 169:1 171:2 172:9 173:11 174:18 177:12,13,18 187:20 188:17,25 190:18 193:6 197:18 205:3,7 206:24 210:8,12 211:15 212:21 214:7 217:23 222:6 232:19 248:1 252:23 253:14 timeliness 118:11 153:10 177:15 timely 108:8,9 139:6 140:19 144:8,17 145:11 149:9,14 150:25 154:15 165:20 167:12,24 222:7 244:21 259:14 times 21:20,22 48:13 48:14 81:3 85:9 214:17 242:4 260:1 timing 15:9 195:13 204:17 title 57:6 124:10,11 131:4 183:1 titled 184:16 today 38:19 76:12 155:3 172:2 176:5,8 185:14 188:3 201:25</p>	<p>238:17 241:25 261:3 today's 36:3 told 8:14 24:9 87:20 232:19 234:2 tomorrow 188:17 231:8,22 235:14 239:6 252:4 tonight 231:1,7 tool 147:7 top 155:21 188:20 189:8 total 15:5 46:23 81:10 96:16 123:21 204:8 totally 211:16 tough 215:9 track 191:15 193:18 228:25 trade 182:21 training 55:17 transaction 199:9 235:4 261:11 transactions 261:11 transcript 1:6 99:14 112:18,20 261:17 transcription 112:17 transfer 113:4,12 128:21 165:18 173:16 192:17,19 203:8 transferable 128:16,17 128:22 197:25 transferred 173:7,9 183:15 192:5 193:7 244:22 transferring 11:13 161:13,16 trapped 206:20 Treasure 182:15 treatment 226:21 treatments 247:15 tree 87:3,3 97:12 106:7 106:11 trend 249:24 trial 8:7 41:9 62:13 63:17 191:5 233:2 238:20 242:3 248:25 tried 48:3 63:9 Trinity 240:6 251:10 true 24:7 30:14,25 33:12 34:16 38:21 39:6 45:10 92:8,17,22 94:13 97:13 98:19 99:9 100:8,20 104:22 105:19 106:23 108:17 113:18 114:16 120:17 121:14 237:19 240:24 261:16 trust 5:6,6,8,9,10,11,14 5:16,18,23,24 6:1,9 6:13,23 7:2,3,4,16 11:4,14 14:24 15:3,22 16:3,16 21:2 22:5 25:17 30:2,3,5,8,9</p>	<p>35:6 36:17,19,25 37:1 40:16 41:1,1,7,15,24 42:11,14,19 49:22 51:7,13 52:6,18,21 113:3,12 180:3,3,5,7 180:8,9,16,17,19,21 180:23,25 181:3,9,12 181:24,25 182:11,12 182:15,18,20 183:1,3 183:5,7,10,16 184:5 184:15,16,16,18,23 184:23 185:4,7,15,20 186:2,5,12,19 187:3 191:23 192:12 193:6 194:25 196:6 197:23 198:1,5,6,7,8,17 201:2,3 202:20 203:20 204:9 223:3 229:6,11,16,22 230:12,13,14,25 231:14,15,18,20,21 254:25 256:2,14 257:16 260:3,4,4,8 trustee 1:10 3:19 6:3 7:2,3,8 14:5 18:4 19:20 21:5 22:16,20 29:23 30:2 36:25 37:4 42:14 47:12,17 47:21 48:8 92:25 163:2,5 181:9,10,24 182:2,23 184:2,4,6,19 185:5,7 186:4,11,14 186:20 187:1 192:11 193:24 198:8 209:19 209:20,22 210:7,13 210:21 212:10,20 213:14 214:5,12,20 214:23 215:3,4,10,15 224:20 225:6,6 228:9 231:1 248:20 250:4 253:10 258:20 trustees 16:25 182:23 249:6 trustee's 224:24 242:1 trusts 16:6 180:24 182:7,7,8 trustworthiness 115:24 116:18 119:19 121:7 121:22,23 trustworthy 118:4 trust's 182:13 truth 31:14 33:13 64:24 65:10 73:25 114:4,8,24 try 8:20 38:16 218:15 241:17 trying 52:24 73:24 99:24 147:6 162:19 195:17 220:8 233:12 249:16 250:4 256:11 tune 107:25 turn 42:18 103:13</p>
---	--	---	--	--

<p>133:22 203:7 221:12 turned 98:11 103:5 turns 117:9 187:17 202:11 Twenty-five 24:18 twice 112:3,4 two 13:25 15:23 24:5 24:15,19 32:23 33:6 33:16 41:2 55:25 56:6 62:9 67:2 71:20 74:11 85:24 87:24 88:18 96:9,13,17 105:6,10 106:20 113:19 128:25 143:8 181:18 185:7 188:20 190:10,13,16,16 204:7 211:19 217:7,8 223:12 232:18 234:15 234:24 241:23 244:15 245:12,15 two-thirds 73:22 type 64:15 126:19 129:9,12,12 137:23 226:18 typed 146:24 147:17 types 126:25 typewritten 147:20 typically 68:4 108:21 135:17 253:20</p> <hr/> <p style="text-align: center;">U</p> <p>UCC 246:13 ugly 228:25 Uh-huh 36:9 ultimate 153:24 ultimately 153:18 185:25 230:5 umbrella 67:4 unbelievable 188:19 uncaring 250:13 undercut 208:8 underlying 121:12 166:8 understand 3:22 4:2,3 4:8 41:10,18,19 45:4 52:22,23 84:16 145:21 149:4 201:2 understanding 5:4 6:1 10:22 11:6 14:23 21:23 22:10 23:5 24:8 50:22 59:11 79:15 80:7 81:14 110:5 145:1 149:19 158:21 167:9 170:19 173:13 239:25,25 understands 215:8 understood 47:8 157:25 unfortunately 18:5 49:10 unique 233:11 unit 124:12 126:3</p>	<p>132:3 133:12,23 169:25 211:4 United 1:1 178:9 University 55:10,12 117:16,17 unknown 8:17,17 86:3 unoperational 79:1 unpaid 91:10,14 unproven 116:12 unrebutted 191:9 unrelated 37:11 46:15 234:16 unsecured 189:15 190:9,9 unsupported 119:10 untimely 144:11,13 148:16,18 update 88:11 updated 6:7 25:14 88:25 upholding 247:8 upkeep 69:3,4 upper 89:10 use 19:13 22:21 30:10 32:23 47:13 122:1 142:10 194:22 196:12 196:16 201:7 215:19 216:7 236:6,11,13 247:19 useless 112:17 uses 27:2 86:11 USG 173:9 usual 240:19 usually 196:23 usury 236:9 utilization 195:13 utilized 206:22 utilizes 67:16 U.S 1:19 63:1 134:5 135:3,4,4 177:21</p> <hr/> <p style="text-align: center;">V</p> <p>vacuum 74:8 98:6,9 valid 111:4,8 113:17 119:7 122:20 137:1,7 152:5 163:3 validity 113:10 153:11 Vallas 208:25 Valley 122:20 199:2 Vallis 252:6 valuable 204:6 value 35:1 41:5 116:13 116:13 119:8 201:5 229:2 valves 98:10 vantage 43:12 45:7,8 variant 243:2 varies 35:18 83:19 variety 152:24 various 22:19 45:3 50:8 85:4 109:18 116:10 193:19 202:6 212:16</p>	<p>221:14 242:12 244:17 vary 83:15 vast 228:15 vegetative 69:20 vehicle 202:20 vein 5:3 vendors 30:6 82:21 venture 233:14 235:13 verbally 99:1 verdict 54:11 verify 57:7 58:16 67:13 72:7 178:9 view 17:2 119:24 163:18 239:12 viewed 246:2 vigorously 187:16 village 230:12 Vince 59:3 Viola 224:3 violated 46:25 violation 46:3,17,21,22 46:24 64:21 70:3,20 71:12 73:13 75:1,17 76:8 78:25 116:4 120:3,10 121:5 122:6 122:9 125:19,20 126:2,3,4 130:15 139:2 144:12,22 145:2,3,20 148:25 149:20 155:14 159:17 173:11,14 210:4,4,11 210:16 227:24 228:2 228:3 248:23 violations 46:14 73:17 73:19 209:24 217:18 227:6,13,23 228:12 246:11 248:19,22 260:24 visit 78:6 VN 72:11 75:23 144:11 VNs 70:12,13,22 108:12 126:9,13 248:19 void 113:2,19 136:14 volumes 249:2 voluntary 197:23</p> <hr/> <p style="text-align: center;">W</p> <p>wait 14:13 51:1 52:3 115:16,16,17 152:20 walk 93:17 132:19 231:6 want 5:5 8:7 21:11 26:2 26:8 38:13 50:25 51:2 54:18 59:8 100:22 107:18 112:6 118:20 122:24 148:1 152:16,19 164:5 167:7 187:20 195:16 195:19 196:19 199:22 200:21 216:2 230:1 231:12 243:25 248:18</p>	<p>250:24 252:23 258:23 259:13 wanted 3:6,12 9:12 19:9 63:25 181:14 203:17 216:1 wants 94:4 156:10,16 163:19 171:17 185:5 wasn't 3:12 44:24 82:5 101:25 108:17 173:15 213:16 226:10 236:17 249:25 waste 45:4 58:7,14 60:2 60:25 63:1 70:10 71:20 90:1 99:1 208:23 226:8,21,21 240:6 247:10 wastes 227:18 water 61:9,12 Watson 208:25 252:6 Watts 173:10 way 7:19,24 8:25 9:5 45:22 46:16 47:21 52:20 84:18 87:17 102:25 112:13 113:14 129:2 163:22 184:10 186:9 194:19 196:3 203:9 210:15 211:8 211:12 218:1 222:13 228:19 235:13 236:10 237:14 251:8 260:7 Wayne 120:15 ways 171:11 website 183:18 WEDOFF 1:7 week 24:10,11 25:3 52:5,11 60:17 104:7 170:20 weekend 112:18 weekly 78:7 weeks 32:23 33:6 208:24 232:19 234:24 252:6 weighing 168:21 169:2 weight 119:25 welfare 249:11 wellhead 120:23 wellheads 120:20 wells 30:14 31:25 33:15 60:9,11 69:21,25 71:13,21 92:13 98:23 102:12,16 106:17 206:17 207:2 208:5 235:3 well-capitalized 222:25 well-financed 232:9 went 117:8 145:20 213:19 215:6 217:20 232:10 249:13 weren't 90:10 209:15 West 30:24 Westview 220:12 we'll 7:11 63:19 139:19</p>	<p>156:21 175:24 198:12 259:5 we're 5:4 8:6,16 50:18 67:9 105:17 119:21 136:4 176:23 187:15 190:24 200:6,20 228:22 231:15 234:6 251:2,8,16 we've 25:11 61:19 77:17 82:20 85:8 103:7 138:15 154:11 160:16 161:15 176:20 194:4 220:12 221:19 230:10 232:11 240:5 240:6 whatsoever 125:13 232:21 wherewithal 243:14 willing 49:17 50:17 113:3 188:8 251:5 willingness 53:20 198:15 240:18 wind 252:15 winning 186:23 wisely 3:12 withdraw 99:12,12 141:16 175:24 witness 2:4 10:1,4,13 11:19,21 18:15 23:20 25:23 26:8 32:18 35:11 37:13 39:12,18 44:6 49:17 51:9,14 52:9,15,23 53:15,16 54:16,21 62:14,22 63:19 68:13 74:4 77:9 79:3,5 81:1,19 81:23,25 82:6 83:15 90:23 93:4,9 94:4 109:3,11 110:8,19,21 110:25 113:23 118:22 123:3,4 128:12 130:2 130:14 141:18,23 142:13,18 144:23 145:12 147:8 149:2,6 149:11,16 154:3,23 156:2,7,15 159:7 160:20 164:11 166:17 166:22 167:1 176:16 176:17,20 177:5 178:19 232:16 234:3 234:23 witnessed 230:10 witnesses 54:6 110:22 159:9,12,12 176:18 201:13 249:1 wondering 13:1 word 45:12 47:13 93:2 184:1 200:6,15 wording 78:1 words 32:23 157:5,11 220:17,20,22 226:11 work 49:12 55:13,15</p>
--	---	--	--	--

56:13 57:12 62:19 63:10 68:20 91:8 124:18 125:24 165:1 175:16,17,21 205:22 210:23 239:2 242:9 252:14 worked 61:4 71:20 165:2 215:8 workers 209:5 242:14 242:15 working 60:15,17 63:8 63:23 73:21 88:24 98:12 106:13 138:21 209:3,4,4 211:12 246:4 250:11 251:13 251:19 works 4:2 100:10,16 169:24 world 195:9 211:5,13 211:18 212:6 230:8 230:19 worse 228:18,19 230:10,23 worsened 69:14 worth 190:14 213:11 213:11 236:5 worthwhile 16:20 43:2 43:3 wouldn't 22:3 102:19 118:23 210:20 249:22 259:9 write 124:21 134:23 183:24 writing 6:7 59:9 71:19 written 34:5,15 53:5,8 134:20 147:16 182:24 wrong 45:8 74:25 136:10 173:9 wrote 89:14 205:21 www.USPS.gov 178:10	209:22 223:12 230:22 241:23 244:15 246:23 250:20 252:3,5,7 yesterday 12:24 64:15 74:17 79:25 102:22 146:20 York 220:15	1.9 86:5 1:30 63:12 1:45 63:13 10 2:6 106:17 217:5 221:23 10-2-2006 146:24 10:30 3:2 100-acre 84:19 101(9) 180:5 181:12 1022 152:17,19 1024 149:25 105 247:8 106 2:7 11 18:4 39:13 47:11 73:8 92:25 99:14 120:9 124:17 125:3 193:24 209:19,20,22 210:7,13,21,23 212:10,18,20 213:14 214:5,12,20,23 215:2 215:3,10,15 240:13 247:15,22 248:6,20 250:3 12 105:18 106:15 138:12,15 184:11 252:5 120 254:21,22 255:17 123 2:8 1246 182:15 1247 182:15 129 99:14 13 1:5 75:10,14,16 101:14 252:3 261:14 13th 132:18 134 150:5 140 60:10 69:25 15 12:23 28:10 31:18 58:2 94:18 208:21 213:10 222:1 15th 56:14 90:9 94:14 150 84:5 111:24 172:14 150,000 242:19 16 12:23 76:2,5 169:8 169:10,14 175:25 192:10 16th 218:25 165 2:9 166 219:14,18 167 2:8 176 2:8 177 2:10 18 38:1 1905 181:19 1972 246:13 1975 57:23 59:19 1980 182:6 1985 247:7 1986 56:10 220:15 1990 117:18 1994 219:20 1995 60:5 87:14 89:11 89:13 101:24 109:22	222:22 1996 60:3 106:12 222:22 1998 59:20 1999 12:2 57:14 127:19 132:16,18 135:14	332 182:16 248:4 336 248:4 340,000 97:6 343 248:9 35 57:6 35434 1:3 3:3 36 85:1 365 183:22 200:2 365(b)(1)(C) 219:21,24 365(f) 219:22 37 182:5 38 117:17 39 173:23 216:15 217:11 39(a) 225:17 39(i) 164:22 225:17,19
X X 2:1 240:5	Z Z 240:5 zero 43:21 250:6	1 1 58:11,14,20,22 59:17 59:18 61:13 67:16,22 67:25 68:1 69:19 88:13 131:4 225:21	2 2 67:22 68:1 182:15 2nd 68:8 76:6 135:23 143:20,24 146:22 177:11 2.3 236:6,6 20 106:17 152:17 178:6 200 30:24 81:16 82:16 141:14 2000 12:12 213:6 2002 65:25 135:14 2003 69:18 71:8 92:25 2005 56:14 72:21 73:14 248:3 2006 75:16 76:7 142:19 142:24,25 143:25 177:12 192:10 218:25 242:25 2007 27:7 68:6,8 94:14 135:23 143:20 2008 1:5 105:13,17,21 109:24 110:7,14 205:10 261:15 2010 188:18 223:12 21 76:22,24 139:21,23 149:24 150:8 219 1:19 22 93:14 99:8 22nd 71:8 23 2:6 246 245:20,22 25 15:4,6 16:15 23:25 24:2 25:6,8 37:25 51:12,24 52:2 256:6 250,000 95:6,12 2500 239:17 256 254:22 255:17 26 31:18 265 117:14 254:23 28th 31:11 34:9,16 35:23 36:2	4 4 71:6 72:21 4th 142:19,25 144:2 4(a) 93:19 4(b) 94:11,12 4(c) 99:9,11 4.5 216:24 4:30 177:16 40 217:25 400-percent 239:18 401 13:1 14:4,12 188:16 403 119:23,24 407 13:14 415 174:11 217:1,4,6 221:22 45 134:14 45-day 135:3 48 2:6 197:22 481 197:21
Y Y 240:5 yeah 20:13 51:4 99:23 178:11 206:6 217:13 236:23 251:2 year 12:11 15:23 27:6 31:11 56:6 83:21 84:4 86:2,4 109:24 123:25 154:20 161:5 161:9 188:7,13 231:16 years 20:16 55:25 56:5 58:2 101:12,14 103:8 105:19 106:15 123:21 123:21,23 135:17,20 157:15,16 162:4 188:20 189:9 190:16 190:16 208:21,24,25	\$ \$1,250,000 188:13 205:10 \$1.1 36:4 \$1.2 28:24 35:4 232:23 \$1.3 241:7 \$1.8 83:20 84:22,23 \$10,000 14:10 35:19 \$110,000 207:14 \$14.5 204:8 \$150,000 14:16,21 29:5 29:22 189:5 213:11 232:20 \$16 28:10 213:11 \$200,000 84:5,5 95:16 \$25,000 79:16 242:22 243:1,8 \$250,000 81:16 82:16 97:24 \$3 15:16 18:25 21:24 42:20 179:12 185:25 188:9 194:8 195:15 195:21,22 199:16 200:22 203:25 205:2 205:2,14 212:25 234:18 235:5 253:6 257:13 \$40,000 35:2 91:13 207:9,13,13 \$500,000 95:10,12,16 \$58,333.33 205:11 \$600,000 215:20 \$7 213:24 \$70,000 207:11 \$700,000 188:5,21 202:11 \$840,000 83:19 95:6 96:25 98:24	0 05 213:6 06 15:25 192:17 07 192:18 08 208:3,4	3 3 63:7,25 64:9 67:10 130:21 143:19 235:2 246:13 3.12 236:23 30 38:1 55:24 91:13 134:16 30(b)(6) 31:10 30-day 134:3,4,9 300,000 95:17 303 180:13 33 88:2,4 117:13 330 30:13 31:25 33:15	5 5 71:24,25 72:5 182:15 236:6 5th 142:24 5.2 86:1 5/1 181:25 5/3 182:1 5/39 174:11 216:25 217:2,3 5/39.5 217:5 221:23 50 27:11,13 49:3,4,22 234:9 237:12 50/50 57:22 500 86:20 87:23 105:9 239:17 500,000 95:14 97:1 52 236:1 54 2:7 56 247:5 59 220:13,15
	1			6 6 94:18 6.1 184:2

6.7 244:7
6:00 251:17
60 14:13
600 86:21 87:15,23
 102:23 105:10
60604 1:20
661 1:20
69 146:7

7

7 14:3 19:20 29:4,22
 39:14 47:17,21 72:19
 182:5
7th 90:10
7(c) 99:6
70 38:2 146:7 148:3
700 87:16
727 220:16
73 221:6
74 220:13
747 220:13
75 49:24 50:4 51:25
 52:2 87:24 237:12
 244:12 256:5
75/25 52:10 53:1
750,000 15:17
753 247:6
760 181:24 182:1
764 247:16
767 117:17

8

800 85:25 86:13 105:11
803 114:2,20,21 115:3
 117:15
803(8) 115:4 117:10
 119:22 120:7 121:16
803(8)(c) 116:3 117:20
8038 65:5
811 57:6
832 245:20,23
840,000 84:21

9

9,216 34:25
9:30 1:4 261:15
90 237:11
9014 82:4
91 2:7
92-7163 10:20 11:4
95 251:24
99 1:3 3:3
993 219:14,18

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)
)
RESOURCE TECHNOLOGY CORPORATION,) No. 99 B 35434
)
Debtor.)
-----)
LEON GREENBLATT, et al.,)
) No. 06 A 00072
Plaintiffs,)
)
vs.)
)
NETWORK ELECTRIC COMPANY,) Chicago, Illinois
) March 5, 2008
Defendant.) 10:00 a.m.

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE EUGENE R. WEDOFF

APPEARANCES:

MR. GEORGE APOSTOLIDES
on behalf of Jay Steinberg;

MR. JAY STEINBERG
Chapter 7 trustee;

MR. GREGORY JORDAN
on behalf of Illinois Investment Trust, Illinois
Generating Station, Chiplease, Scattered, and Banco;

MR. ROBERT O'MEARA
on behalf of Allied;

MS. LINDA KUJACA
on behalf of the City and County of Peoria.

1 THE CLERK: Resource Technology
2 Corporation, 99 B 35434, with related adversary,
3 Leon Goldblatt, Chiplease, and Bank PanAmericano
4 versus Network Electric Company, 06 A 72.

5 MR. APOSTOLIDES: Good morning, Your
6 Honor. George Apostolides on behalf of Jay
7 Steinberg.

8 MR. STEINBERG: Good morning, Your Honor.
9 Jay Steinberg, Chapter 7 trustee.

10 MR. JORDAN: Gregory Jordan on behalf of
11 Illinois Investment Trust, Illinois Generating
12 Station, Chiplease, Scattered, Banco.

13 MR. O'MEARA: Robert O'Meara on behalf of
14 Allied, Your Honor.

15 MS. KUJACA: Good morning, Your Honor.
16 Linda Kujaca on behalf of the City and County of
17 Peoria.

18 THE COURT: Okay.

19 MR. JORDAN: First thing with regard to
20 NEC, the motions relating to Network Electronic
21 Company, we would ask that those be continued to
22 next week where the settlement --

23 MR. STEINBERG: The 11th.

24 MR. JORDAN: -- is set. It's the 11th,
25 right.

1 MR. APOSTOLIDES: Right.

2 MR. STEINBERG: Yes.

3 THE COURT: Okay.

4 MR. JORDAN: And I represented to
5 Mr. Vigano that we would do so, so he is not here
6 today.

7 THE COURT: 3/11 for that.

8 Now, the matters involving the City
9 of Peoria and Allied have come before the court on a
10 motion to reopen the trial for the filing of
11 additional proof on the issue of whether the
12 trustee's proposed assignee can satisfy its burden
13 under Section 365(b)(1)(C) of the Bankruptcy Code to
14 provide adequate assurance of future performance.

15 This court held a trial on
16 February 12 and 13, 2008, to hear and consider
17 evidence on the ability of the proposed assignee,
18 Illinois Investment Trust, to operate the landfill
19 gas-to-energy conversion, collection, and control
20 systems at Litchfield, Bloomington, Springfield, and
21 Peoria, Illinois.

22 At the trial, the burden was on the
23 Chapter 7 trustee to prove that IIT had sufficient
24 resources to carry on the business operations at
25 each of the sites. This included substantial costs

1 to cure RTC's defaults under its agreements. The
2 parties had agreed that the cure in future
3 performance would require funding of at least
4 \$3 million.

5 At the trial then there were three
6 issues to be determined: One, whether the
7 \$3 million was available to IIT and would actually
8 be received by IIT; two, whether \$3 million would be
9 sufficient and what contingencies were in place for
10 securing additional funding; and, three, whether
11 IIT's personnel would be able to obtain the
12 necessary permits and otherwise operate the sites in
13 compliance with all applicable regulations.

14 Because the court found that the
15 first issue had to be determined against the
16 trustee's motion, the court found that there was no
17 reason to find the other issues, determine the other
18 issues.

19 The basis for that determination,
20 that the funding had not been shown to be
21 sufficiently available, was multitudinous. First,
22 IIT offered no financial records whatever. Its sole
23 source of funding for the operations of the landfill
24 gas facilities was proposed to be a revolving line
25 of credit from Scattered Corporation and Chiplease.

1 Therefore, this loan was absolutely essential to
2 IIT's ability to perform under the contracts. Yet,
3 the loan agreement offered into evidence provided no
4 effective remedy against the lenders by either IIT
5 or the counterparties to the operating agreement in
6 the event of a breach by the proposed lenders.

7 Thus, there was no assurance of financial
8 performance to support the contractual performance.
9 That rendered the contracts incapable of being
10 assumed by reason of the lack of adequate assurance
11 of performance by the assignee.

12 There are actually four separate
13 grounds for coming to that conclusion. First, the
14 loan's promissory note introduced into evidence
15 imposed no obligation on Scattered or Chiplease, the
16 proposed lenders, to make the loan. It only imposed
17 an obligation on IIT to repay the loans that it
18 received. Scattered Corporation offered no
19 financial records of its own, and admitted that it
20 did not currently have the funds on hand to meet
21 loan obligations.

22 Second, there are fundamental
23 structural impediments to enforcement of the
24 proposed loan agreement. The lenders were the
25 beneficiaries of the trust. The trust assets are

1 revocable, and the beneficiaries could remove the
2 trustee at will.

3 Third, the loan agreement imposed no
4 affirmative obligation on the part of IIT to use
5 whatever funds were produced pursuant to the loan
6 agreement to operate the facilities in question.

7 And, fourth, the counterparties had
8 no ability to ensure that the funds actually made
9 available -- would be made available to IIT or that
10 the funds would be used to operate the facilities.
11 There was insufficient evidence presented to support
12 a finding that IIT is a business trust under
13 Illinois law. And common law trusts are not
14 eligible for involuntary bankruptcy and cannot sue
15 or be sued in their own names.

16 Thus, the counterparties would have
17 had no recourse if IIT were to default under the
18 contracts even if these contracts were otherwise
19 enforceable. Accordingly, for all of those reasons,
20 the motion to assume and assign the facility
21 operating agreements was denied.

22 In the present motion, the Chapter 7
23 trustee seeks to reopen the trial to provide
24 additional assurance of future performance to
25 support assumption and assignment. The authority

1 relied on for this new proposal is, quote, "the
2 court's invitation to the trust to revise its
3 proposal for showing adequate assurance of future
4 performance." The court made no such invitation.

5 What I did in commenting on the
6 inadequacy of what was produced as evidence of
7 adequate assurance is to give some idea of what
8 might have been assurance of adequate -- excuse me,
9 adequate assurance of future performance. I noted
10 the kinds of alternatives that might have given
11 parties assurance that the funds would actually be
12 deposited. I mentioned an escrow account as a
13 mechanism that might have provided that kind of
14 assurance. But that was not to say that the court
15 would entertain a motion to reopen the trial to
16 allow the trustee or the proposed assignee to create
17 a new transaction that would satisfy the kinds of
18 requirements that the court indicated.

19 Had there been time to file a new
20 motion to propose a different arrangement than what
21 was proposed at trial, it might very well have been
22 appropriate for such a thing to be proposed. The
23 problem is that the deadline for assumption and
24 assignment of contracts has long passed. The only
25 transaction that was proposed within that deadline

1 was the one that the court found to be inadequate.

2 So the question here is not whether
3 a different proposal can be approved, but whether
4 the trial of the original proposal can be reopened
5 to allow new evidence to be presented.

6 Specifically, the trustee proposes
7 an irrevocable assignment by IIT to a new entity,
8 Illinois Generating Station No. I, Inc., or, in the
9 alternative, requests an order allowing the estate
10 to assign the contracts directly to Illinois
11 Generating Station.

12 The trustee also seeks to offer
13 revised loan agreements and evidence that the
14 Illinois Generating Station has been sufficiently
15 funded with an initial sum of \$500,000 to begin
16 operation. It appears that this revised transaction
17 came about after the trial and instruction to
18 respond to the court's concerns on the reasons for
19 denying the original motion.

20 Now, a motion to reopen to submit
21 additional proof is generally subject to the sound
22 discretion of the court. See Zenith Radio
23 Corporation versus Hazetine Research, Inc., 401 U.S.
24 321, 331, 1971, Nanda versus Ford Motor Company, 509
25 F.2d 213, Seventh Circuit, 1974.

1 A motion to reopen is intended to
2 revive the prior proceedings. The Supreme Court has
3 analogized such motions to motions for relief from
4 final judgment under Federal Rule of Civil Procedure
5 60(b). See *Stone versus INS*, 514 U.S. 386, 405,
6 1995. The effect of granting such a motion is to
7 vacate the previous judgment in the case, and that's
8 essentially what the trustee requests in this case.

9 If the motion to reopen were
10 granted, the case would be reinstated and would go
11 forward from this point. See *McCormick versus City*
12 *of Chicago*, 230 F.3d 319, 326, 327, Seventh Circuit,
13 2000. It is well-established in this circuit,
14 however, that Rule 60(b) is an extraordinary remedy
15 and is granted only in exceptional circumstances,
16 *Dickerson versus Board of Education*, 32 F.3d 1114,
17 1116, Seventh Circuit, 1994.

18 Courts have an interest in seeing
19 that all of the facts bearing on a judgment are
20 presented at the time of the initial trial.
21 Similarly, litigants have an interest in finality of
22 judgment. The parties in this case have been
23 litigating the question of assumption and assignment
24 for nearly a year-and-a-half.

25 Therefore, Peoria objects, stating

1 that the trustee is essentially seeking a new trial
2 as opposed to reopening the trial to admit
3 additional evidence. Motions for a new trial are
4 governed by Federal Rule of Civil Procedure 59 and
5 made applicable to bankruptcy cases by Federal Rule
6 of Bankruptcy Procedure 9023.

7 Peoria argues that by creating a
8 designee corporation after trial, the trustee is
9 seeking relief not contemplated in the original
10 motion to assume and assign. Under its proposal,
11 IIT is only nominally the assignee, since Illinois
12 Generating Station will be assigned the contract as
13 soon as the favorable order is entered by the court.

14 Second, Peoria notes Seventh Circuit
15 authority to the effect that new evidence under
16 Rule 59 must have been in existence at the time of
17 the trial. See Peacock versus Board of School
18 Commissioners, 721 F.2d 210, 213, 214, Seventh
19 Circuit, 1983. See also 11 Federal Practice &
20 Procedure, Section 2808, quote, "As is true under
21 Rule 60(b)(2), in order to comply with Rule 59, the
22 court must find that the newly discovered evidence
23 itself as well as the facts that it supports were in
24 existence at the time of trial," close quote.

25 On the merits, Peoria reiterates its

1 position at trial that its agreement with RTC
2 terminated under its own terms and thus cannot be
3 assumed or assigned.

4 Based on all of these
5 considerations, the discretion that the court has to
6 reopen the case will be exercised against reopening.
7 The fact is that the trustee had an ample period of
8 time to propose what the trustee wanted to propose
9 as an appropriate assignee for the gas rights
10 agreements that were involved in this trial. The
11 parties spent a substantial amount of time preparing
12 for that trial. The court spent a substantial
13 amount of time hearing it and ruling on it.

14 As I indicated earlier, the evidence
15 presented at trial was plainly insufficient to
16 establish the trustee's obligation, burden of proof.
17 To show adequate assurance of future performance and
18 to allow a new proposal to be presented after the
19 court made the ruling and well after the deadline
20 for making motions to assume or assign had passed
21 would not be appropriate. The court's discretion
22 then being exercised against, the motion will be
23 denied.

24 MR. JORDAN: Your Honor, just to clarify,
25 Your Honor's recollection of what occurred is not

1 correct. Your Honor did say -- I said you indicated
2 what would be needed, and I indicated that should --
3 we can file a motion to reconsider, to which you
4 responded, no, what you should do is file a motion
5 for change of circumstances. And we have
6 provided --

7 THE COURT: Do you have a --

8 MR. JORDAN: -- and met --

9 THE COURT: - transcript?

10 MR. JORDAN: -- all of those --

11 THE COURT: Do you have a transcript?

12 MR. JORDAN: We have ordered the
13 transcript. We haven't --

14 THE COURT: All right. I'll continue
15 this to review that transcript. But even if I told
16 you to do something which in further review turns
17 out to have been improvident, I don't think that
18 changes anything.

19 The fact of the matter is that we
20 had the trial. You presented the evidence that you
21 thought would support assumption or assignment. I
22 found that that evidence was insufficient to
23 establish adequate assurance. If I told you that
24 you might be able to file a motion to reconsider
25 that, sobeit, you filed the motion. But I didn't

1 indicate that I would grant the motion. I had not
2 had any argument from the other side. How could I
3 have done that?

4 MR. O'MEARA: If I may be heard, Your
5 Honor? Robert O'Meara on behalf of Allied. Two
6 points. In regards to Mr. Jordan's point that the
7 court invited or allowed a motion for
8 reconsideration, my recollection is different. The
9 transcript I think will prove it. He mentioned
10 bringing a motion under Rule 59, and you said
11 absolutely not, that would be improper. You need to
12 file a new motion. That's my recollection, and
13 we'll let the transcript prove that up.

14 THE COURT: Well, let me interrupt you on
15 that point because that's essentially what is the
16 distinction that I made right now. If the time for
17 filing a motion to assume or assign had not expired,
18 certainly you'd be free to make another motion with
19 a different assignee, which is essentially what
20 you're doing right now. But if the time for doing
21 that has expired, then you have an obstacle.

22 What's your second point?

23 MR. O'MEARA: My second point, Your
24 Honor, is you mentioned Peoria's objection in
25 reading your opinion. I just wanted to clarify or

1 make sure that that applied to Allied's cites as
2 well.

3 THE COURT: Of course. The issues that
4 I've raised here are identical because the question
5 of adequate assurance is identical. We're
6 dealing --

7 MR. O'MEARA: I thought so.

8 THE COURT: -- with the same assignee.

9 MR. O'MEARA: I just wanted to put that
10 on the record. Thank you very much.

11 MR. JORDAN: Are we going to continue
12 this for another hearing, or should we just go ahead
13 and file our appeal?

14 MR. O'MEARA: I don't think another --

15 MR. JORDAN: I would like --

16 MR. O'MEARA: -- extension is necessary.

17 MR. JORDAN: -- another hearing
18 personally because I know what Your Honor said, and
19 it's important to me that I act in accordance with
20 Your Honor's --

21 THE COURT: Well, let me do this: Why
22 don't you present the transcript. I'll review the
23 transcript. If there's anything in the transcript
24 that causes me to reconsider what I've done today,
25 I'll give you -- we'll have the benefit of that to

1 allow me to do it. I don't think that's going to be
2 the case. But by all means, prepare the transcript
3 and let me see what I said.

4 MR. JORDAN: Are we going to continue
5 this to another date or --

6 THE COURT: Do you have a date from the
7 court reporter as to --

8 MR. O'MEARA: Tomorrow.

9 MR. JORDAN: I don't have --

10 THE COURT: -- when the transcript --

11 MR. JORDAN: I don't have --

12 THE COURT: -- will be available?

13 MR. STEINBERG: -- a date from the court
14 reporter. And I had a miscommunication with my
15 assistant where I asked the closing be expedited,
16 and she -- and I asked everything else. So --

17 MR. O'MEARA: My understanding is the
18 closing is going to be ready tomorrow. My paralegal
19 talked to the court reporter yesterday. The
20 closing, which is when this came up, it's supposed
21 to be ready Thursday.

22 MR. JORDAN: Well, then let's do it next
23 week so I'll have the opportunity to review it --

24 MR. STEINBERG: Do it the 11th.

25 MR. JORDAN: -- and Your Honor will have

1 the opportunity to review it, and Mr. O'Meara, if
2 he'd like to review it.

3 But, you know, it's particularly
4 important in all of the cases in the world and this
5 case that, in addition to everything else, when I'm
6 acting, you know, I'm not trying to pull anything
7 and I'm not trying to --

8 THE COURT: Oh --

9 MR. JORDAN: -- bend the rules or
10 anything.

11 THE COURT: -- no, Mr. Jordan. Let me
12 make that clear. I am not faulting you at all for
13 filing this motion. And certainly there have been
14 other events in this case where an initial filing
15 was inadequate and it was corrected by a subsequent
16 filing.

17 The difficulty here is that the
18 deadline for making motions of this sort has passed.
19 I take it that you have filed this in complete good
20 faith, and I have no problem with that at all. The
21 problem I have here is simply that I think it's
22 untimely. I think it is effectively a new motion.
23 I think the grounds for reconsideration or reopening
24 the evidence as to the original motion are
25 inadequate. But I will look at the transcript. If

1 there's anything in the transcript that causes me to
2 look at the situation differently, you'll have the
3 benefit of that review.

4 If you can get me the transcript as
5 soon as it's available, I'll be able to review it.
6 And we'll set this for March 11 at 10:00 o'clock.

7 MR. JORDAN: Very good, Your Honor.

8 MR. O'MEARA: Is this for status, Your
9 Honor? I mean, this will be your order, that it
10 take effect, or are we continuing it?

11 THE COURT: This is continued.

12 MR. O'MEARA: Okay.

13 MR. APOSTOLIDES: Judge, one
14 clarification. The motion as to NEC is set for 9:30
15 on the 11th.

16 THE COURT: Yeah?

17 MR. APOSTOLIDES: Do you want to just
18 move everything to 10:00 o'clock?

19 THE COURT: Yeah, that would be fine.

20 MR. APOSTOLIDES: Great. Thank you.

21 THE COURT: Okay.

22 MR. STEINBERG: Thank you, Your Honor.

23 MR. JORDAN: Thank you.

24 MR. O'MEARA: Thank you, Your Honor.

25

(Which were all the proceedings
had in the above-entitled cause,
March 5, 2008.)

I, GARY SCHNEIDER, CSR, RPR, DO HEREBY CERTIFY THAT
THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF
PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.

EXHIBIT D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)
)
RESOURCE TECHNOLOGY CORPORATION,) No. 99 B 35434
)
Debtor.)
-----)
LEON GREENBLATT, et al.,)
) No. 06 A 00072
Plaintiffs,)
)
vs.)
)
NETWORK ELECTRIC COMPANY,) Chicago, Illinois
) March 11, 2008
Defendant.) 10:00 a.m.

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE EUGENE R. WEDOFF

APPEARANCES:

MS. GRETCHEN SILVER
on behalf of the U.S. Trustee;

MR. GENE GEEKIE
on behalf of Network Electric;

MR. JAY STEINBERG
Chapter 7 trustee;

MR. GEORGE APOSTOLIDES
on behalf of Jay Steinberg as trustee;

MR. GREGORY JORDAN
on behalf of Chiplase, Banco, Greenblatt, Illinois
Investment Trust, and Illinois Generating Station;

MR. LOUIS BERNSTEIN
on behalf of the receiver, Harry Henderson;

MS. LINDA KUJACA
on behalf of the City and County of Peoria;

MR. DAVID BOHAN
on behalf of Allied.

1 THE CLERK: Resource Technology
2 Corporation, 99 B 35434, with related adversary,
3 Leon Greenblatt and Banco PanAmericano versus
4 Network Electronic Company, 06 A 72.

5 MS. SILVER: Gretchen Silver from the
6 U.S. Trustee's Office.

7 MR. GEEKIE: Gene Geekie for Network
8 Electric.

9 MR. STEINBERG: Jay Steinberg, Chapter 7
10 trustee.

11 MR. APOSTOLIDES: George Apostolides on
12 behalf of Jay Steinberg as trustee.

13 MR. JORDAN: Gregory Jordan on behalf of
14 Chiplease, Banco, Greenblatt, and Illinois
15 Investment Trust, and Illinois Generating Station.

16 MR. BERNSTEIN: Good morning, Your Honor.
17 Louis Bernstein on behalf of the receiver, Harry
18 Henderson.

19 MS. KUJACA: Linda Kujaca on behalf of
20 the City and County of Peoria.

21 MR. BOHAN: Good morning, Your Honor.
22 David Bohan on behalf of Allied.

23 THE COURT: Okay. Mr. Jordan, I had
24 continued the proceeding to allow a review of the
25 transcript to determine whether I had misled you

1 into believing that I would consider the merits of
2 any motion that you might file with a new and
3 different arrangement for the assumption and
4 assignment of the landfill gas conversion agreements
5 that were at issue here. And I have had an
6 opportunity to review the transcript, and I believe
7 I've isolated the relevant portions that bear on
8 this question.

9 On page 22 of the transcript, you
10 had suggested that you might be able to make changes
11 in the status of the entities that were going to be
12 the assignees. And I said, "Well, see, this is a
13 little bit like Let's Make a Deal. What I'm
14 supposed to do here is to pass on whether the
15 transaction that you're proposing, the assignee that
16 you're proposing is offering adequate assurance,
17 rather than to speculate about what might be
18 adequate assurance or in lieu of what or in addition
19 to what's actually being proposed.

20 "I could speculate that it might be
21 much better if you set up an escrow account and put
22 \$3 million into the escrow account and had some kind
23 of agreement that money could only be drawn out of
24 the escrow account for purposes relating to
25 performance under this agreement. That would be

1 better than what we have right now. It might
2 provide more adequate assurance than what we have
3 right now.

4 "But I don't think I want to
5 speculate with you on what alternatives to what's
6 being offered now would provide adequate assurance.
7 I think what I'm required to do is make a
8 determination as to whether what is being proposed
9 now meets the requirements of Section 365 or not."

10 The other portion of the transcript
11 that might bear on this question is at the end in
12 the colloquy that we had during the closing,
13 starting at page 79 of the transcript, where I said,
14 "I'm concerned about the ability of the trust to
15 enforce the loan agreement against the parties who
16 are providing the only source of payment for the
17 obligations that are going to be assumed and
18 assigned. And what I am telling you is that, based
19 on everything I've heard, I've come to the
20 conclusion that that assurance is not present here,
21 that we have an entity with no operating history and
22 no enforceable obligation to obtain the funds that
23 it needs to comply with these agreements.

24 "Now, you're telling me I could
25 impose conditions that might change that

1 circumstance. That's not an obligation of the
2 court."

3 And then after a brief interruption,
4 I said, "The obligation of the court is to look at
5 the agreement -- excuse me, to look at the
6 circumstances that are presented by the proposed
7 assignee and make a determination as to whether
8 those circumstances as presented to the court
9 provide adequate assurance of future performance,
10 and what I have found here is that the circumstances
11 do not."

12 Finally at page 81, I said, "Now, if
13 you want to come up with some other arrangement, it
14 may be that you have the opportunity to do that, and
15 you can present that to the court. But there has
16 not been a showing of adequate assurance that would
17 enable me to allow the assignment that's now being
18 proposed."

19 You said, "And perhaps what we'll do
20 is come up with a different arrangement and file a
21 motion to reconsider."

22 And I interrupted to say, "It
23 wouldn't be a motion to reconsider. It would be a
24 motion to consider a new arrangement."

25 You said, "That's fine."

1 And I said, "And if you want to do
2 that and if that's timely, I will certainly consider
3 that. But this arrangement, for the reasons I have
4 just given, does not meet the requirements."

5 Now, I did not in any way suggest
6 that a motion to propose a new arrangement would be
7 timely. I said I would consider it if it were
8 timely. And as we discussed the last time the case
9 was before me, the time for proposing assumption or
10 assignment of these contracts expired some time ago.
11 A new arrangement cannot timely be presented to the
12 court, and therefore, entirely consistent with the
13 discussion that we had at trial itself, I do not
14 believe that this current motion to come up with a
15 new arrangement is timely or can be considered by
16 the court on its merits.

17 MR. JORDAN: Well, Your Honor, just for
18 the record, at the end you indicated -- on page 83
19 starting at line 20, you said, "But the principle
20 and the basis on which I'm rendering my decision
21 today is that the counterparties to this contract,
22 these contracts, have no ability to assure that the
23 funds necessary for performance by the proposed
24 assignee actually be made available. And if another
25 provision, another arrangement were submitted to the

1 court that gave those kinds of assurances, it's
2 possible that this transaction, these transactions,
3 could be approved." So --

4 THE COURT: Consistent with what I --

5 MR. JORDAN: So I --

6 THE COURT: -- said earlier --

7 MR. JORDAN: -- filed --

8 THE COURT: -- it would have to be
9 timely.

10 MR. JORDAN: So I filed my motion. Now,
11 Your Honor can deny the motion. But I filed the
12 motion because you indicated that if another
13 alternative arrangement were presented, you could
14 consider it. You didn't say you'd approve it. And
15 I'm not saying, Your Honor, you told me you would
16 approve this. I'm saying that I followed what I
17 understand to be your ruling and addressed the
18 specific items that you indicated were lacking
19 through the client, gave, you know, the --

20 THE COURT: Okay. Mr. Jordan, the
21 question is simple, did I in any way indicate to you
22 that an untimely motion for assumption and
23 assignment would be considered by the court on the
24 merits, and I did not. I made it very clear on
25 page 82 that any such new motion would have to be

1 timely. I was not aware at the time that I had that
2 colloquy with you what deadlines were in place as
3 far as filing a motion to assume or reject. And it
4 turns out that the time for filing such a motion had
5 passed some time ago. So the motion is not timely,
6 and that's the basis on which I'm denying it, and
7 that is consistent with the discussion that we had
8 on the record.

9 MR. JORDAN: Thank you, Your Honor.

10 THE COURT: Okay. Is there anything else
11 that needs to be discussed? Oh, yes, we have to
12 approve the NEC sale -- settlement --

13 MR. JORDAN: Settlement.

14 THE COURT: -- today. There's been no
15 objection to that settlement and --

16 MR. STEINBERG: No objection, Judge.

17 THE COURT: -- it will be approved.

18 MR. JORDAN: We've tendered our signed
19 documents to the trustee, and I believe we've seen
20 the PDF, the signed documents, from --

21 MR. STEINBERG: And I think you got --

22 MR. JORDAN: -- NEC.

23 MR. STEINBERG: -- a draft order there.

24 THE COURT: The draft order will be
25 entered.

1 MR. STEINBERG: Thank you, Your Honor.

2 MR. BERNSTEIN: Your Honor, the only
3 question I had is I was curious how this order with
4 the secured creditor, Mr. Jordan's client, how that
5 affects the receivership and the permits that are
6 pending in the Circuit Court of Cook County before
7 Judge Hall.

8 THE COURT: Well, I'm not speculating on
9 that.

10 MR. JORDAN: That's --

11 THE COURT: That's not a matter that's
12 before me.

13 MR. BERNSTEIN: Okay.

14 MR. JORDAN: Thank you for your time,
15 Your Honor.

16

17 (Which were all the proceedings
18 had in the above-entitled cause,
19 March 11, 2008.)

20

21 I, GARY SCHNEIDER, CSR, RPR, DO HEREBY CERTIFY THAT
22 THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF
23 PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.
24
25

EXHIBIT E

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

RESOURCE TECHNOLOGY CORPORATION,

Debtor.

Chapter 7

Case No. 99 B 35434

Hon. Eugene R. Wedoff

**Agreed Order Extending the Deadline for the Trustee
To Assume or Reject Executory Contracts and Unexpired Leases
With American Disposal Services, Inc. and Allied Waste Industries, Inc.**

This matter coming before the Court on the Motions of Chapter 7 Trustee (not individually but solely as representative of the Estate of Resource Technology Corporation ("Trustee")) For An Order To Extend Time To Assume Or Reject Executory Contracts And Unexpired Leases Of Nonresidential Real Property filed on November 8, 2005 and November 16, 2005, and any supplemental filings thereto (the "Motions"), American Disposal Services, Inc. and Allied Waste Industries, Inc. (collectively "Allied"), as the owner of certain landfills identified in those Motions, and the Trustee hereby stipulate and agree to the following terms of this Order; the Court finding notice of the Motions to be appropriate and being otherwise fully advised in the premises,

THE PARTIES HEREBY STIPULATE TO AND IT IS HEREBY ORDERED that:

1. In regards to the December 21, 1995 contract involving the Pontiac Landfill site (a/k/a Livingston Landfill), Allied agrees to extend the time by which the Trustee can move to assume or reject the Pontiac Landfill portion of that contract until January 31, 2006.

2. In regards to that portion of the December 21, 1995 contract involving the Wheatland, Clarion and Wyandot landfill sites (the "Disputed Contract Sites"), and only to the extent RTC possesses any contract rights to or at the Disputed Contract Sites (which Allied disputes), Allied agrees to extend the time by which the Trustee can move to assume or reject the Disputed Contract Sites portion of the contract to January 31, 2006. This stipulation shall not be deemed and shall not constitute an admission by Allied that RTC possesses any contract rights to or at the Disputed Contract Sites and, furthermore, nothing in this stipulation shall be deemed to be a release or waiver of any right, claim or cause of action of any kind that Allied has that the Disputed Contract Sites portions of the December 21, 1995 contract were validly terminated by Allied prior to the date of this Order.

3. In regards to the Bloomington, Litchfield, and Sangamon (a/k/a Springfield) landfill sites, and only to the extent RTC possesses any contract rights to or at the Bloomington¹, Sangamon² and Litchfield³ landfill sites, Allied agrees to extend the time by which the Trustee can move to assume or reject such contracts between RTC and Allied (and/or any Allied subsidiary) to January 31, 2006 provided, however, that nothing in this stipulation shall extend the right to assume or reject any contract that has already expired or been terminated and nothing in this stipulation shall be deemed to be a release or waiver of any right, claim or cause of action of any kind that Allied (and/or any Allied subsidiary) may have that any such contracts have expired or been terminated prior to the date of this Order.

Dated: _____

ENTERED: _____

U.S. Bankruptcy Judge

Agreed:

Jay A. Steinberg, not individually but
solely as Chapter 7 Trustee for the Estate
of Resource Technology Corporation

By: _____
One of his Attorneys

American Disposal Services, Inc.

By: _____
One of its Attorneys

Allied Waste Industries, Inc.

By: _____
One of its Attorneys

1021155_2

¹ This Order specifically includes the agreement between the Debtor and Sectors relating to the Bloomington site.

² This Order specifically includes the agreement between the Debtor and ESG Watts relating to the Springfield/Sangamon site.

³ This Order specifically includes the agreement between the Debtor and Liberty Waste Services relating to the Litchfield site.

3. In regards to the Bloomington, Litchfield, and Sangamon (a/k/a Springfield) landfill sites, and only to the extent RTC possesses any contract rights to or at the Bloomington¹, Sangamon² and Litchfield³ landfill sites, Allied agrees to extend the time by which the Trustee can move to assume or reject such contracts between RTC and Allied (and/or any Allied subsidiary) to January 31, 2006 provided, however, that nothing in this stipulation shall extend the right to assume or reject any contract that has already expired or been terminated and nothing in this stipulation shall be deemed to be a release or waiver of any right, claim or cause of action of any kind that Allied (and/or any Allied subsidiary) may have that any such contracts have expired or been terminated prior to the date of this Order.

Dated: 11/30/05

ENTERED:


U.S. Bankruptcy Judge

Agreed:

Jay A. Steinberg, not individually but
solely as Chapter 7 Trustee for the Estate
of Resource Technology Corporation

By: 
One of his Attorneys

American Disposal Services, Inc.

By: 
One of its Attorneys

Allied Waste Industries, Inc.

By: 
One of its Attorneys

1021155_2

¹ This Order specifically includes the agreement between the Debtor and Sacton relating to the Bloomington site.

² This Order specifically includes the agreement between the Debtor and ESG Watts relating to the Springfield/Sangamon site.

³ This Order specifically includes the agreement between the Debtor and Liberty Waste Services relating to the Litchfield site.

EXHIBIT F

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

RESOURCE TECHNOLOGY
CORPORATION,

Debtor.

Chapter 7
Case No. 99 B 35434

Hon. Eugene R. Wedoff

Hearing Date: January 24, 2006

Hearing Time: 10:00 a.m.

**FOURTH MOTION OF CHAPTER 7 TRUSTEE FOR AN ORDER TO EXTEND
TIME TO ASSUME OR REJECT CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

Jay A. Steinberg, not individually, but solely as the Chapter 7 Trustee for the estate of Resource Technology Corporation case (the "Trustee"), pursuant to Section 365,¹ respectfully moves this Court for entry of an order to further extend time to assume or reject certain executory contracts and unexpired leases of nonresidential real property, as listed on the attached Exhibit A to February 28, 2006. In support of this Motion, the Trustee respectfully represents as follows:

BACKGROUND

1. On November 15, 1999, (the "Petition Date"), an involuntary petition for relief under Chapter 7 of the Bankruptcy Code was filed against Resource Technology Corporation (the "Debtor").
2. An order for relief was entered on January 18, 2000, at which time the case was converted to one under Chapter 11.
3. Thereafter, Gregg E. Szilagy was appointed as the Chapter 11 Trustee.

¹Unless otherwise noted, references to "Section ____" are to the United States Bankruptcy Code 11 U.S.C., §§101 through 1330.

4. On September 14, 2005, creditors of the Debtor's estate moved to convert the case to Chapter 7. On September 21, 2005, this court entered an order converting this case to Chapter 7.

5. Thereafter, Trustee was appointed as the Interim Chapter 7 Trustee. On November 4, 2005, the § 341 meeting of creditors was held and concluded. Trustee is now the permanent Trustee herein.

6. The Debtor is in the business of collecting and selling methane gas from landfills. As such, the Debtor is a party to numerous landfill agreements.

JURISDICTION

7. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this case in this District is appropriate under 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

8. On November 8, 2005, the Trustee filed a Motion to extend time to assume or reject certain executory contracts and unexpired leases listed in that motion. The Court granted the motion in part with respect to some leases and contracts, and entered and continued the motion with respect to others.

9. In supplemental motions, the Trustee sought to further extend the time to assume or reject, through and including January 31, 2006.

10. By this Motion, the Trustee is seeking similar relief – to extend the time to assume or reject executory contracts and unexpired leases pursuant to section 365(d) of the Bankruptcy Code – with respect to other leases and contracts entered into by the Debtor. The subject contracts and leases to this Motion are listed on the attached

Exhibit A (collectively, the "Agreements"). The Trustee is seeking to extend the deadline to February 28, 2006.

LEGAL AUTHORITY

11. Section 365(d)(1) provides:

In a case under chapter 7 of this title, if the Trustee does not assume or reject an executory contract or unexpired lease...within 60 days after the order for relief, or within such additional time as the court, for cause within such 60 day period, fixes, then such contract or lease is deemed rejected.

11 U.S.C. § 365(d)(1). Further, Section 365(d)(4) provides:

Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

11 U.S.C. § 365(d)(4) (emphasis added).

12. Upon a showing of cause by a Trustee, courts may grant extensions of the time period by which a Trustee must either assume or reject unexpired leases on nonresidential real property. See e.g., In the Matter of James Wilson Associates, 965 F.2d 160, 164 (7th Cir. 1992) (affirming bankruptcy judge's power to extend time for election by debtor in possession to assume or reject an unexpired lease of nonresidential real property); In re Bon Ton Restaurant and Pastry Shop, Inc., 52 B.R. 850, 855 (Bankr. N.D.Ill. 1985) (granting extension of the debtor's time to assume or reject leases); see also In re Burger Boys, 94 F.3d 755, 761 (2d Cir. 1996) (affirming extensions of time to assume or reject lease when cause is established).

13. The Trustee anticipates closing the sale of assets to DTE Biomass Energy, Inc., or such higher bidder (the "Closing") on or about February 6, 2006.

14. The sale of assets to DTE requires the rejection of certain contracts. However, until the sale is approved and closes, the Trustee is not in a position to either assume or reject the Agreements.

15. There is ample cause for this Court to extend the time within which the Trustee may assume or reject the Agreements to February 28, 2006, without prejudice to the Trustee's right to request additional extensions, if necessary.

16. It is in the best interest of all creditors of the Debtor's estate, to extend the time for the Trustee to assume or reject the Agreements to February 28, 2006.

NOTICE

17. Notice of this Motion has been given to: (a) all lessors and parties to the Agreements; (b) the Office of the United States Trustee; (c) the Debtor's 20 largest unsecured creditors; and (d) other parties in interest who have requested service. In light of the nature of the relief requested herein, the Trustee submits that no further notice is required.

WHEREFORE, the Trustee respectfully requests that the Court enter an order (i) extending the time to assume or reject the Agreements through February 28, 2006; and (ii) granting such other and further relief as the Court deems just and proper.

Dated: January 18, 2006

**JAY STEINBERG, not individually, but
solely as the CHAPTER 7 TRUSTEE FOR
THE ESTATE OF RESOURCE
TECHNOLOGY CORPORATION**

By: /s/ Joy E. Levy
One of his Attorneys

Barry A. Chatz
Miriam R. Stein
Joy E. Levy
ARNSTEIN & LEHR LLP
120 S. Riverside Plaza, Suite 1200
Chicago, IL 60606
Phone: (312) 876-7100 / Fax: (312) 876-0288

EXHIBIT A**Executory Contracts and/or Unexpired Leases**

SITE/FACILITY	DATE OF AGREEMENT (if avail.)	PARTY(IES) TO AGREEMENT(S)	EXTENSION DATE
Belvidere	08/11/1993	Mineral Resource, Inc.	February 28, 2006
Bi-State	10/27/1995	Noble Earth Corporation Erma Knoeppner	February 28, 2006
Bloomington	12/29/1995	Sexton Contractors Allied Waste Industries	February 28, 2006
Brimfield		CILCO/Commonwealth Edison (Power Purchase Agreement)	February 28, 2006
Clarion	12/21/1995	American Disposal Services, Inc. Allied Waste Industries	February 28, 2006
Columbus	08/15/1995	City of Columbus, GA	February 28, 2006
Corpus Cristi (Elliott)	11/26/1996	City of Corpus Christi Texas Energy Transfer (Gas Sales Agreement)	February 28, 2006
Danville	10/10/1994	Thomas 12 th Street Disposal	February 28, 2006
Fort Dodge	10/28/1994	North Central Iowa Regional Solid Waste Agency	February 28, 2006
Gary	12/26/1996	City of Gary, Indiana Texas Energy Transfer (Gas Sales Agreement)	February 28, 2006
GNOL	09/18/1996	Southern Recovery Management	February 28, 2006
Hillside		Commonwealth Edison (Power Purchase Agreement)	February 28, 2006
Kewanee		National Closure Corporation	February 28, 2006
Lansing	04/24/1995	John Sexton Contractors Sexton Companies Commonwealth Edison (Power Purchase Agreement) National Closure Corporation	February 28, 2006
Litchfield	12/30/1996	Liberty Waste Services of Ohio Allied Waste Industries	February 28, 2006

SITE/FACILITY	DATE OF AGREEMENT (if avail.)	PARTY(IES) TO AGREEMENT(S)	EXTENSION DATE
Lyons/McCook	12/27/1995	American Grading Company Commonwealth Edison (Power Purchase Agreement) Run Energy (O&M Agreement)	February 28, 2006
Mobile, AL		Texas Energy Transfer / Mobile Gas (Gas Sales Agreement)	February 28, 2006
New Haven	12/31/1996	City of New Haven	February 28, 2006
New Orleans		Texas Energy Transfer (Gas Sales Agreement)	February 28, 2006
Ottawa	04/15/1997	States Land Improvement Corp.	February 28, 2006
Paxton	12/21/1995	Stryker International, Inc.	February 28, 2006
Peoria	11/30/1995	City and County of Peoria CILCO (Power Purchase Agreement)	February 28, 2006
Pontiac	12/21/1995	Solar Turbines (O&M Agreement) Commonwealth Edison (Power Purchase Agreement) Nicor Gas	February 28, 2006
Rosencranse	12/31/1996	Rosencranse Corporation	February 28, 2006
Sangamon (Springfield)	05/26/1995	ESG Watts, Inc. Commonwealth Edison/CILCO (Power Purchase Agreement) Allied Waste Industries	February 28, 2006
Shelton	04/10/1994	Connecticut Resources Recovery United Illuminating Co.	February 28, 2006
Taylor Ridge	05/26/1995	ESG Watts, Inc.	February 28, 2006
Viola	08/01/1996	ESG Watts, Inc.	February 28, 2006
Wheatland	12/21/1995	American Disposal Services, Inc. Allied Waste Industries	February 28, 2006
Wyandot	12/21/1995	American Disposal Services, Inc. Allied Waste Industries	February 28, 2006
Gas Rights and Collection Facilities Lease (ALL SITES)		Green Gas Delaware Statutory Trust	February 28, 2006
Gas Sales Agreement (ALL SITES)		Green Gas Delaware Statutory Trust	February 28, 2006
O&M Agreements (ALL SITES)		Green Gas Delaware Statutory Trust	February 28, 2006
Gas Rights and Collection Facilities Lease (ALL SITES)		Pontiac Business Trust	February 28, 2006
Gas Sales Agreement (ALL SITES)		Pontiac Business Trust	February 28, 2006

SITE/FACILITY	DATE OF AGREEMENT (if avail.)	PARTY(IES) TO AGREEMENT(S)	EXTENSION DATE
O&M Agreements (ALL SITES)		Pontiac Business Trust	February 28, 2006
Gas Rights and Collection Facilities Lease (ALL SITES)		AECC Pontiac LLC	February 28, 2006
Gas Sales Agreement (ALL SITES)		AECC Pontiac LLC	February 28, 2006
O&M Agreements (ALL SITES)		AECC Pontiac LLC	February 28, 2006
Gas Rights and Collection Facilities Lease (ALL SITES)		Red Gas, LLC	February 28, 2006
Gas Sales Agreement (ALL SITES)		Red Gas, LLC	February 28, 2006
O&M Agreements (ALL SITES)		Red Gas, LLC	February 28, 2006
Gas Rights and Collection Facilities Lease (ALL SITES)		Archimedes Gas & Electric, Inc.	February 28, 2006
Gas Sales Agreement (ALL SITES)		Archimedes Gas & Electric, Inc.	February 28, 2006
O&M Agreements (ALL SITES)		Archimedes Gas & Electric, Inc.	February 28, 2006
Gas Rights and Collection Facilities Lease (ALL SITES)		Voltaire Gas & Electric, Inc.	February 28, 2006
Gas Sales Agreement (ALL SITES)		Voltaire Gas & Electric, Inc.	February 28, 2006
O&M Agreements (ALL SITES)		Voltaire Gas & Electric, Inc.	February 28, 2006
Multi-site Environmental Permitting/Monitoring		Trinity Consultants	February 28, 2006
Waste Condensate Disposal		RS Used Oil	February 28, 2006
Environmental Monitoring Software		Enviance, Inc.	February 28, 2006
Credit Agreement between RTC and Aquila Energy Capital	4/10/2002	Aquila Energy Capital Corporation	February 28, 2006

SITE/FACILITY	DATE OF AGREEMENT (if avail.)	PARTY(IES) TO AGREEMENT(S)	EXTENSION DATE
AGC Document No 415 Standard Form of Design Build Agreement (Beecher)	08/09/2000	Network Electric	February 28, 2006
Construction Loan Agreement (\$513,592.06) (Beecher)	12/08/2000	Network Electric	February 28, 2006
Construction Loan Agreement (\$2,721,507.94) (Beecher)	12/08/2000	Network Electric	February 28, 2006
Equipment Lease Agreement (Beecher)	12/08/2000	Network Electric	February 28, 2006
Performance Bond issued by Federal Insurance Company (\$7MM) (Beecher)	03/2001	Network Electric	February 28, 2006
Payment Bond issued by Federal Insurance Company (\$7MM) (Beecher)	03/2001	Network Electric	February 28, 2006
Confidentiality Agreement (Beecher)	04/11/2000	Network Electric	February 28, 2006
Letter Agreement (Beecher)	04/16/2000	Network Electric	February 28, 2006
Participation Agreement (Beecher)	06/2000	Network Electric	February 28, 2006
Plant Upgrading Loan Agreement (Beecher)	08/11/2000	Network Electric	February 28, 2006
Phone/Internet Service		Loop Telecommunications	February 28, 2006
Headquarters		RN Realty (Office Rent)	February 28, 2006

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

RESOURCE TECHNOLOGY
CORPORATION,

Debtor.

Chapter 7

Case No. 99 B 35434

Hon. Eugene R. Wedoff

**ORDER FURTHER EXTENDING TIME FOR TRUSTEE TO
ASSUME OR REJECT EXECUTORY CONTRACTS AND UNEXPIRED
LEASES OF NON-RESIDENTIAL REAL PROPERTY**

This matter coming before the Court on the Second Motion of Jay A. Steinberg, not individually but solely as the Chapter 7 Trustee of Resource Technology Corporation for an Order Further Extending the Time for the Trustee to Assume or Reject Executory Contracts and Unexpired Leases of Nonresidential Real Property (the "Motion"); the Court having reviewed the Motion, finding notice to be sufficient and being otherwise fully informed in the premises,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Trustee's time to assume or reject the executory contracts and unexpired leases of nonresidential real property listed on the attached Exhibit A (the "Agreements") is hereby extended to February 28, 2006.
3. This Order shall not prejudice the right of the Trustee to seek additional extensions of time to assume or reject the estate's executory contracts and unexpired leases of nonresidential real property, including the Agreements.

Dated: _____

ENTERED:

United States Bankruptcy Judge

EXHIBIT G

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

RESOURCE TECHNOLOGY
CORPORATION,

Debtor.

Chapter 7

Case No. 99 B 35434

Hon. Eugene R. Wedoff

**ORDER FURTHER EXTENDING TIME FOR TRUSTEE TO
ASSUME OR REJECT EXECUTORY CONTRACTS AND UNEXPIRED
LEASES OF NON-RESIDENTIAL REAL PROPERTY**

This matter coming before the Court on the Fifth Motion of Jay A. Steinberg, not individually but solely as the Chapter 7 Trustee of Resource Technology Corporation for an Order Further Extending the Time for the Trustee to Assume or Reject Executory Contracts and Unexpired Leases of Nonresidential Real Property (the "Motion"); the Court having reviewed the Motion, finding notice to be sufficient and being otherwise fully informed in the premises,

IT IS HEREBY ORDERED THAT:

1. With respect to certain landfills identified on Exhibit A which are owned by American Disposal Services, Inc. and Allied Waste Industries, Inc. (collectively, along with its respective subsidiaries and affiliates, "Allied"):

(a) In regards to that portion of the December 21, 1995 contract involving the Wheatland, Clarion and Wyandot landfill sites (the "Disputed Contract Sites"), and only to the extent RTC possesses any contract rights to or at the Disputed Contract Sites (which Allied disputes), the time by which the Trustee can move to assume or reject the Disputed Contract Site portion of the contract is extended to April 28, 2006.

(b) In regards to the Bloomington, Litchfield, and Sangamon (a/k/a Springfield) landfill sites, and only to the extent RTC possesses any contract rights to or at the Bloomington¹, Sangamon² and Litchfield³ landfill sites, the time

¹ This Order specifically includes the agreement between the Debtor and Sexton relating to the Bloomington site.

for the Trustee to move to assume or reject such contracts is extended to April 28, 2006.

2. The time for the Trustee to assume or reject all other executory contracts and/or unexpired leases of nonresidential real property listed on the attached Exhibit A is hereby extended to April 28, 2006.

3. Nothing in this Order shall extend the right to assume or reject any contract that has already expired or been terminated and nothing in this Order shall be deemed to be a release or waiver of any right, claim or cause of action of any kind that any party (and/or its affiliates and subsidiaries) to such contracts may have that such contracts have expired and/or been terminated prior to the date of this Order.

4. This Order shall not prejudice the right of the Trustee to seek additional extensions of time to assume or reject the estate's executory contracts and unexpired leases of nonresidential real property, including the Agreements.

Dated: MAR 16 2006

ENTERED:


United States Bankruptcy Judge

² This Order specifically includes the agreement between the Debtor and ESG Watts relating to the Springfield/Sangamon site.

³ This Order specifically includes the agreement between the Debtor and Liberty Waste Services relating to the Litchfield site.

EXHIBIT A**Executory Contracts and/or Unexpired Leases**

SITE/FACILITY	DATE OF AGREEMENT (if avail.)	PARTY(IES) TO AGREEMENT(S)	EXTENSION DATE
Belvidere	08/11/1993	Mineral Resource, Inc.	April 28, 2006
Bi-State	10/27/1995	Noble Earth Corporation Erma Knoeppner	April 28, 2006
Bloomington	12/29/1995	Sexton Contractors Allied Waste Industries	April 28, 2006
Brimfield		CILCO/Commonwealth Edison (Power Purchase Agreement)	April 28, 2006
Clarion	12/21/1995	American Disposal Services, Inc. Allied Waste Industries	April 28, 2006
Danville	10/10/1994	Thomas 12 th Street Disposal	April 28, 2006
Fort Dodge	10/28/1994	North Central Iowa Regional Solid Waste Agency	April 28, 2006
Gary	12/26/1996	City of Gary, Indiana Texas Energy Transfer (Gas Sales Agreement)	April 28, 2006
GNOL	09/18/1996	Southern Recovery Management	April 28, 2006
Hillside		Commonwealth Edison (Power Purchase Agreement)	April 28, 2006
Kewanee		National Closure Corporation	April 28, 2006
Lansing	04/24/1995	John Sexton Contractors Sexton Companies Commonwealth Edison (Power Purchase Agreement) National Closure Corporation	April 28, 2006
Litchfield	12/30/1996	Liberty Waste Services of Ohio Allied Waste Industries	April 28, 2006

SITE/FACILITY	DATE OF AGREEMENT (if avail.)	PARTY(IES) TO AGREEMENT(S)	EXTENSION DATE
Lyons/McCook	12/27/1995	American Grading Company Commonwealth Edison (Power Purchase Agreement) Run Energy (O&M Agreement)	April 28, 2006
Mobile, AL		Texas Energy Transfer / Mobile Gas (Gas Sales Agreement)	April 28, 2006
New Haven	12/31/1996	City of New Haven	April 28, 2006
New Orleans		Texas Energy Transfer (Gas Sales Agreement)	April 28, 2006
Ottawa	04/15/1997	States Land Improvement Corp.	April 28, 2006
Peoria	11/30/1995	City and County of Peoria CILCO (Power Purchase Agreement)	April 28, 2006
Pontiac	12/21/1995	Solar Turbines (O&M Agreement) Commonwealth Edison (Power Purchase Agreement) Nicor Gas	April 28, 2006
Sangamon (Springfield)	05/26/1995	ESG Watts, Inc. Commonwealth Edison/CILCO (Power Purchase Agreement) Allied Waste Industries	April 28, 2006
Taylor Ridge	05/26/1995	ESG Watts, Inc.	April 28, 2006
Viola	08/01/1996	ESG Watts, Inc.	April 28, 2006
Wheatland	12/21/1995	American Disposal Services, Inc. Allied Waste Industries	April 28, 2006
Wyandot	12/21/1995	American Disposal Services, Inc. Allied Waste Industries	April 28, 2006
Gas Rights and Collection Facilities Lease (ALL SITES)		Green Gas Delaware Statutory Trust	April 28, 2006
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Gas Rights and Collection Facilities Lease (ALL SITES)		Pontiac Business Trust	April 28, 2006
Gas Sales Agreement (ALL SITES)		Pontiac Business Trust	April 28, 2006

SITE/FACILITY	DATE OF AGREEMENT (if avail.)	PARTY(IES) TO AGREEMENT(S)	EXTENSION DATE
O&M Agreements (ALL SITES)		Pontiac Business Trust	April 28, 2006
Gas Rights and Collection Facilities Lease (ALL SITES)		AECC Pontiac LLC	April 28, 2006
Gas Sales Agreement (ALL SITES)		AECC Pontiac LLC	April 28, 2006
O&M Agreements (ALL SITES)		AECC Pontiac LLC	April 28, 2006
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O&M Agreements (ALL SITES)		Archimedes Gas & Electric, Inc.	April 28, 2006
Gas Rights and Collection Facilities Lease (ALL SITES)		Voltaire Gas & Electric, Inc.	April 28, 2006
Gas Sales Agreement (ALL SITES)		Voltaire Gas & Electric, Inc.	April 28, 2006
O&M Agreements (ALL SITES)		Voltaire Gas & Electric, Inc.	April 28, 2006
Multi-site Environmental Permitting/Monitor ing		Trinity Consultants	April 28, 2006
Waste Condensate Disposal		RS Used Oil	April 28, 2006
Environmental Monitoring Software		Enviance, Inc.	April 28, 2006

Credit Agreement between RTC and Aquila Energy Capital	4/10/2002	Aquila Energy Capital Corporation	April 28, 2006
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SITE/FACILITY	DATE OF AGREEMENT (if avail.)	PARTY(IES) TO AGREEMENT(S)	EXTENSION DATE
AGC Document No 415 Standard Form of Design Build Agreement (Beecher)	08/09/2000	Network Electric	April 28, 2006
Construction Loan Agreement (\$513,592.06) (Beecher)	12/08/2000	Network Electric	April 28, 2006
Construction Loan Agreement (\$2,721,507.94) (Beecher)	12/08/2000	Network Electric	April 28, 2006
Equipment Lease Agreement (Beecher)	12/08/2000	Network Electric	April 28, 2006
Performance Bond issued by Federal Insurance Company (\$7MM) (Beecher)	03/2001	Network Electric	April 28, 2006
Payment Bond issued by Federal Insurance Company (\$7MM) (Beecher)	03/2001	Network Electric	April 28, 2006
Confidentiality Agreement (Beecher)	04/11/2000	Network Electric	April 28, 2006
Letter Agreement (Beecher)	04/16/2000	Network Electric	April 28, 2006
Participation Agreement (Beecher)	06/2000	Network Electric	April 28, 2006
Plant Upgrading Loan Agreement (Beecher)	08/11/2000	Network Electric	April 28, 2006

EXHIBIT H

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	Chapter 7 Proceeding
)	
RESOURCE TECHNOLOGY)	
CORPORATION,)	Case No. 99 B 35434
)	
Debtor.)	Hon. Eugene R. Wedoff
)	

NOTICE OF MOTION

To: See Attached Service List

Please Be Advised that on January 18, 2007 at 9:30 a.m., Illinois Investment Trust No. 92-7163 as Designee of the Rights of Chiplease, Inc. and Scattered Corporation, Allied Waste Industries, Inc., American Disposal Services of Illinois, Inc. and Sangamon Valley Landfill, Inc. will appear by counsel before the Honorable Eugene R. Wedoff, or any judge presiding in his stead in Courtroom 744, 219 S. Dearborn St., Chicago, Illinois, and shall then and there present their Joint Motion To Extend Trial Date, a copy of which is attached hereto.

**Respectfully submitted,
Illinois Investment Trust No. 92-7163 as Designee
of the Rights of Chiplease, Inc. and Scattered
Corporation**

BY: /s/ Gregory J. Jordan
One of Their Attorneys

Gregory J. Jordan (ARDC #6205510)
Peter J. Schmidt (ARDC #6256638)
Dykema Gossett PLLC
10 S. Wacker Drive, Suite 2300
Chicago, Illinois 60606
(312) 876-1700
(312) 876-1155 (Telecopier)

David C. Bohan (ARDC # 3122194)
Robert S. O'Meara (ARDC # 6256472)
Sachnoff & Weaver, Ltd.
10 S. Wacker Drive, 40th Floor
Chicago, IL 60606
(312) 207-1000 Telephone
(312) 207-6400 Facsimile

CERTIFICATE OF SERVICE

I, Gregory J. Jordan, certify that on January 15, 2007, I served this Notice of Motion, and the document referred to herein, on the persons listed on the attached service list, by electronically filing the same with the United States Bankruptcy Court and by facsimile on any parties not receiving electronic notice.

/s/ Gregory J. Jordan

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 11 Proceeding
)	
RESOURCE TECHNOLOGY CORPORATION)	Case No. 99-35434
)	
Debtor.)	Hon. Eugene R. Wedoff
)	

SERVICE LIST

Jay A. Steinberg
321 North Clark Street
Suite 2800
Chicago, IL 60610-4764
Fax Number: (312) 832-4700

Barry A. Chatz
Arnstein & Lehr LLP
120 South Riverside Plaza
Suite 1200
Chicago IL 60606
Fax Number: (312) 876-0288

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	Chapter 7 Proceeding
)	
RESOURCE TECHNOLOGY CORPORATION,)	Case No. 99 B 35434
)	
Debtor.)	Hon. Eugene R. Wedoff
)	

JOINT MOTION TO EXTEND TRIAL DATE

Illinois Investment Trust No. 92-7163 as Designee of the Rights of Chiplease, Inc. and Scattered Corporation ("IIT") by and through Gregory J. Jordan and Peter J. Schmidt, its counsel, and Allied Waste Industries, Inc., American Disposal Services of Illinois, Inc. and Sangamon Valley Landfill, Inc. (collectively "Allied") by and through David Bohan and Robert O'Meara, their counsel, together move this court for an extension of discovery and the trial dates related to the Litchfield, Illinois Landfill, the Bloomington, Illinois Landfill, and the Springfield, Illinois Landfill, and in support thereof state as follows:

1. This Court has set a trial to be conducted on February 5-7, 2007 (the "Trial") relating to certain agreements identified in the Motion of Chapter 7 Trustee Pursuant to Court's Order Compelling Trustee to Assume and Assign Certain Executory Contracts Subject to Court Approval of (1) Demonstration by the Purchasers of the Ability to Pay Cure Costs; (2) Demonstration by the Purchasers of Adequate Assurance of Future Performance; (3) Assumption; and (4) Assignment (the "Motion to Assume").
2. Specifically, the Trial concerns certain issues relating to the proposed assumption and assignment of the following three contracts into which the Debtor has entered:

- a. An agreement with ESG Watts relating the Springfield landfill entitled "Agreement", which is dated May 26, 1995. Allied Waste Industries, Inc., and Sangamon Valley Landfill, Inc. are the assignees of the rights of ESG Watts under that agreement;
 - b. An agreement with Allied Waste Industries, Inc. and American Disposal Services of Illinois, Inc. relating to the Litchfield landfill entitled "Agreement", which is dated December 30, 1996; and
 - c. An agreement with Liberty Waste of Ohio relating to the Bloomington landfill entitled "Agreement" dated December 30, 1995 by and between the DEBTOR and Liberty Waste of Ohio. Allied Waste Industries, Inc. and American Disposal Services of Illinois, Inc. are the assignee of the rights of Liberty Waste of Ohio under that agreement.
3. IIT and Allied have commenced discussions that focus on reaching an agreement concerning the issues to be addressed at the Trial. The parties seek an extension of the discovery and of the trial dates to allow them sufficient time to reach a consensual resolution.
 4. IIT and Allied jointly request that the discovery cut-off and the trial date be extended for at least thirty days to allow the parties to have sufficient time to resolve the issues by consent.

WHEREFORE, Illinois Investment Trust No. 92-7163 as Designee of the Rights of Chiplease, Inc. and Scattered Corporation, Allied Waste Industries, Inc., American Disposal

Services of Illinois, Inc. and Sangamon Valley Landfill, Inc. respectfully request that this Court extend the close of discovery and reschedule the trial currently set for February 5, 6 and 7, 2007, and grant the parties such other and further relief as this Court deems just and equitable.

**ILLINOIS INVESTMENT TRUST
NO. 92-7163 AS DESIGNEE OF THE
RIGHTS OF CHIPLEASE, INC.
AND SCATTERED CORPORATION**

**ALLIED WASTE INDUSTRIES, INC.,
AMERICAN DISPOSAL SERVICES
OF ILLINOIS, INC. AND SANGAMON
VALLEY LANDFILL, INC.**

By: /s/ Gregory J. Jordan
One of Its Attorneys

By: /s/ David C. Bohan
One of Their Attorneys

Gregory J. Jordan (ARDC # 6205510)
Peter J. Schmidt (ARDC # 6256638)
Dykema Gossett PLLC
10 South Wacker Drive, Suite 2300
Chicago, IL 60606
(312) 627-2171 Telephone
(866) 698-0830 Facsimile

David C. Bohan (ARDC # 3122194)
Robert S. O'Meara (ARDC # 6256472)
Sachnoff & Weaver, Ltd.
10 S. Wacker Drive, 40th Floor
Chicago, IL 60606
(312) 207-1000 Telephone
(312) 207-6400 Facsimile

EXHIBIT I

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN THE MATTER OF:)	Chapter 7 Proceeding
)	
Resource Technology Corporation,)	No. 99 B 35434
)	
Debtor.)	Judge Eugene R. Wedoff
)	

ORDER ON JOINT MOTION TO EXTEND TRIAL DATE

This proceeding having come before the Court on the Joint Motion to Extend Trial Date (the "Joint Motion") filed by Illinois Investment Trust No. 92-7163, Allied Waste Industries, Inc., American Disposal Services of Illinois, Inc. and Sangamon Valley Landfill, Inc., due notice having been given and the Court being fully advised, it is hereby ordered:

1. The Joint Motion is granted. The Court's Trial Order of September 18, 2006 regarding the Bloomington, Litchfield and Sangamon sites (Docket No. 3583) is vacated and the February 5 through February 9, 2007 trial dates are stricken.
2. The parties shall notice discovery, so that they will complete all discovery on or before February 19, 2007.
3. The parties shall exchange witness and exhibit lists and file the lists with the Court on or before February 21, 2007. All exhibits shall be identified by the numbers proposed to be used at trial.
4. The parties shall not use large format demonstrative evidence if the information can be provided on 8½" x 11" paper.
5. Motions in limine or objections to the admission of exhibits shall be filed on or before February 23, 2007.
6. The Court will rule on any such motions on February 26, 2007 at 9:30 a.m.
7. No later than 4:30 p.m. on the day before the trial, all parties shall submit copies of their exhibits to the Court. If the hard copies of a party's exhibits can be contained in a single 3-inch ring binder, the party may submit the exhibits in that manner, with one binder for the judge and a separate binder for the law clerk. If the exhibits cannot be contained in a single 3-inch ring binder, then the party must submit the exhibits on a CD-ROM, in PDF format, with each exhibit as a separate document, and with bookmarks for major divisions and for any attachments to the exhibit. A party may submit a CD-ROM rather than a binder even where the volume of exhibits would not require submission of a CD-ROM. Two copies of each CD-ROM must be submitted. Each CD-ROM shall be labeled with the name of the case and the party on whose behalf it is submitted.

8. Any listed exhibits as to which there is no objection will be admitted into evidence at the outset of the hearing.

9. Absent extraordinary circumstances, the examination of each witness shall be limited to direct, cross-examination and re-direct.

10. The trial in this matter shall commence on February 26, 2007 at 9:30 a.m. To the extent necessary, the trial in this matter shall re-commence on February 27, 2007 at 10:30 a.m.

Dated: January _____, 2007

ENTER:

A handwritten signature in black ink, appearing to read "Eugene R. Wedoff", with a stylized flourish at the end.

Hon. Eugene R. Wedoff
Chief Bankruptcy Judge

JAN 19 2007